

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1062

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

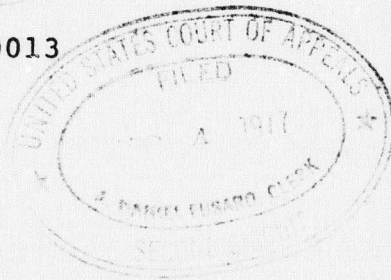
GINO REDA and LOUIS REDA,

Defendant-Appellant.

JOINT APPENDIX

BERNARD ALAN SEIDLER
Attorney for Defendant-Appellant
Gino Reda
401 Broadway
New York, N.Y. 10013
(212) 226-1795

PETER SHERMAN
Attorney for Defendant-Appellant
Louis Reda
401 Broadway
New York, N.Y. 10013
(212) 226-1795



PAGINATION AS IN ORIGINAL COPY

INDEX

	<u>Page</u>
DOCKET ENTRIES GINO REDA	A-1
DOCKET ENTRIES LOUIS REDA	A-5
INDICTMENT	A-10
CHARGE OF THE COURT FIRST TRIAL (GINO REDA)	A-15
CHARGE OF THE COURT SECOND TRIAL (GINO AND LOUIS REDA	A-51
EXCERPTS OF EXHIBIT 18A	A-101
EXCERPTS OF TRANSCRIPT OF TRIAL	A-105
JOHN TUFFO	A-106
JOSEPH BARBATTO	A-105

DOCKET ENTRIES FOR GINO REDA

F-1

DOCKET - U.S. District Court

JUDGE/MAGISTRATE Assigned U.S. 01 - REDA, CIND

0958

0208 01

09 03 76 0873 01

02

U.S. TITLE/SECTION: 21:846, 21:812, 841

OFFENSES CHARGED: Consp. to viol. Fed. Narco. Laws. Distr. & possess. of Cocaine

ORIGINAL COURT: 1, 2-4

U.S. DISTRICT COURT OF APPEALS
FEB 9 1976
SECOND DEPT.

U.S. MAG. CASE NO. 76-980

CALL - RELEASE

AMT. ☐ High ☐ Low

Set ☐ Pers. Recor. ☐ IPSA

Conditions: ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd ☐ Other

Disposition of Charges: 12-30-76

Sentence: 1-4-77

KEY DATES & INTERVALS

ARREST or: 10: a.m. 8/26/76

INDICTMENT X: Information 9-3-76

ARRAIGNMENT: 9-9-76

TRIAL: 11-3-76, 12-30-76

MAGISTRATE

DATE: 8/25/76

INITIAL NO.: MDJ-08B

INITIAL APPEARANCE DATE: 8/26/76

PRELIMINARY EXAMINATION OR REMOVAL HEARING: 9/3/76

OUTCOME: DISMISSED

OFFENSE: 21 USC 812, 841(a)(1), 841(b)(1)(A) and 846 - NARCOTICS

U.S. Attorney or Asst. Federico E. Virella, Jr. 791-1984

ATTORNEYS: Paul Bergman 25 Bdw, NYC 10004 269-4900

02-REDA

8/25/76: Complaint filed, complaint ordered sealed.

8/26/76: Complaint ordered unsealed, defendant presented, represented by Hercules E. Fuffolo, Esq. Defendant remanded into the custody of U.S. Marshal in lieu of \$40,000 cash or surety.

8/31/76: On application of defendant's attorney, Paul B. Berman, Esq., 25 Broadway, N.Y. and over the objection of U.S. Attorney, Frederick Virella, bail modified to \$70,000 PRB secured with 10% cash and to be co-signed by responsible person. Defendant to surrender passport to U.S.A. Defendant to report to PSA once a week, if unable to be in N.Y. to see PTA, will call and check in with U.S. Attorney in Fla. Bail limits extended to S.D. of Fla.

9/3/76: Indictment filed, 76 Cr. 873

9-9-76: Deft. produced in custody of Marshal, bail fixed at \$50,000. cash /surety. Deft. continued remanded in lieu of bail as fixed. Werker, J

9-10-76: Deft. present (Atty. present) pleads not guilty. Bail cont'd at \$50,000 cash or surety. Deft. cont'd remanded in lieu of bail. Case assigned to Stewart, J...Haight, J.

9-10-76: Filed defts. notice of appearance by: (for plea) Paul Bergman of 25 Bdw, NYC 10004.

H-2

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
	(DOCUMENT NO.)		Interval Section (a)	Start Date and Date (b)	End Date (c)	Total Days (d)
9-13-76	Deft. and atty. present. Hearing held and adj. <u>sine die</u> . Stewart, J.					
9-28-76	Filed govts. notice of readiness for trial.					
9-20-76	Hearing held. Bail application is denied. Bail remains at the same, \$50,000 cash or surety. Deft. is remanded. Stewart, J.					
09-21-76	Filed Magistrates Temporary Commitment Re: \$40,000 Bail. Unexecuted.					
10-07-76	Filed defts motion for discovery and inspection - ret. 10-21-76					
10-07-76	Filed defts motion for a bill of particulars - ret. 10-21-76					
10-22-76	Motion for severance granted. Trial scheduled for 11 11-1-76 at 10 A.M. STEWART, J.					
10-27-76	Deft. Gino Reda, atty Present. Defts. application to adj. severance motion. Dec. Res. STEWART, J.					
10-29-76	Filed Defts. affirmation and notice of motion for an order pursuant ot Rule 12(b)(3) and Rule 41(e) of the F.R.C.P. suppressing and prohibiting the use of and ordering the return of all documents.,					
10-29-76	Filed defts. affirmation and notice of motion to supsess oral statements and communications.					
10-29-76	Filed defts. memorandum of law in support of motion to supress.					
11-3-76	Filed Govts motion for discovery and inspection and bill of particulars.					
11-3-76	Filed govt's memorandum of law in opposition to deft. motion for severance.					
11-3-76	Filed defts. memorandum of law in support of motion to supress.					
11-3-76	Filed Govt's memorandum of law in opposition to defts. motion to supress.					
11-8-76	Filed deft's questions to be submitted by court to prospective jurors.					
11-8-76	Filed Govt's request for the voir dire..					

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

B

D. C. 110A Rev. Civil Docket Continuation

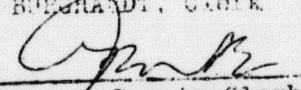
DATE	PROCEEDINGS
1-15-76	Filed govt's requests to charge.
1-15-76	Filed defts. request to charge.
1-15-76	Filed Govt's supplemental requests to charge.
1-1-76	Deft. Gino Rada, Suppression hearing held.
1-3-76	Defts. counsel Steadman S. Stahl, Jr., of Hollowood, Florida (923-15-48) admitted. Jury Impaneled - Trial begun.....STEWART.J.
11-4-76	Trial cont'd Defts. motion for mistrial- Granted. Jurors discharged. Jury empaneled trial begun as to Gino Rada.
11-5-76	Trial cont'd.
11-8-76	Trial cont'd.
11-9-76	Trial cont'd.
11-10-76	Trial cont'd.
11-11-76	Trial cont'd.
11-12-76	Trial cont'd.
11-15-76	Trial cont'd & concluded. Jury verdict Ct. 1, Guilty, Ct. 2, No Verdict, Ct. 3, Guilty, Ct. 4 Guilty. Bail increased to \$75,000.00. PSI ordered. Sentence adj'd to Dec. 28, 1976 at 9:30 AM..... STEWART.J.
11-29-76	Filed defts. notice of motion for new trial or in the alternative judgment of acquittal notwithstanding the verdict of the jury.
11-29-76	Filed defts. memorandum in support of motion for new trial and or in the alternative for a judgment of acquittal notwithstanding the verdict of the jury.
11-30-76	Motion that defts. furnish exemplars to the Govt. Motion Granted. Govt's motion to consolidate Gino Rada open Ct. 3. with Trial of Luis Rada. Dec. Res.....STEWART.J.
12-3-76	Filed defts. affidavit and notice of motion to direct govt. to provide deft. with transcript of prior trial.
12-8-76	Filed Memo-End on defts. motion filed on 12-3-76 Motion denied since the deft. has not qualified for relief under the C.J. Act. So Ordered STEWART.J. m/n
12-7-76	Both defts. atty. present. Defts. motion for directed verdict... Denied....STEWART.J. Defts. motion for transcript ..DENIED... Pre-Trial conf. held. Referred to Magistrate Schriber.....STEWART.J.
12-10-76	Filed Memo-End on Motion filed on 11-29-76 Motion denied in all respects as per the oral opinion delivered in court on Dec. 7, 1976 So Ordered..... STEWART.J. m/n
12-12-76	Filed Memo-End on Motion filed on 12-18-76

PROCEEDINGS

Date
Judge

DATE	PROCEEDINGS	Date Judge
12-17-76	Filed Govt's supplemental request for the voir dire of prospective jurors.	
12-17-76	Filed Govt's memorandum of law.	
12-27-76	Filed deft's memorandum of law	
12-27-76	Filed govt's memorandum of law (in opposition to defts motions for severance & other relief	
12-17-76	Counsel Stephen Jenkins present Trial begun	
12-20-76	Trial cont'd	
12-21-76	" "	
12-22-76	" "	
12-23-76	" "	
12-27-76	" "	
12-28-76	" "	
12-29-76	" "	
12-30-76	Jury verdict DEft Gina Reda Guilty on ct 2 Bail cont's in su \$75,000 DEft remanded in leau of bail Supplemental PSI ordered Ser adj 1-7-77 at 9:30 A.M.....Stewart,J.	
1-4-77	Filed govt's supplemental requests to charge	
1-7-77	Filed COMMITMENT & JUDGMENT (Atty Stephen Jenkins present) The deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of counts 1,2,3,4, & are to run concurrently with each other. Pursuant to the provisions of Title 21 Section 851 USC The deft is placed on Special Parole for a period of THREE (3) YEARS TO COMMENCE UPON EXPIRATION of confinement- Special parole is imposed of counts 2,3, & 4 & are to run concurrently with each other DEft was advised of his rights pursuant to Rule 32 (a) (2) of the Federal Rules of Criminal Procedure....Stewart,J. issued copies	
1-12-77	Filed AMENDED JUDGMENT & COMMITMENT Judgment ent 1-7-77 is amended as follows the deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of counts 1,2,3, & 4 & are to run concurrently with each other. pursuant to the provisions of Title 21 Section 841, U.S.C. the deft is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement SPECIAL PAROLE is imposed on each of counts 2,3, & 4 & are to run concurrently with each other DEft was advised of his rights to Rule 3 (2) of the Fed R. Crim Procedure Pursuant to Rule 35 of the Fed R. Cr procedure recommendation is made that Service of sentence be executed at a Federal Prison in the State of Florida...Stewart,J. issued copies	
1-12-77	Filed order that deft be held at the MCC until 1-21-77 the Court also recommends that the deft be assigned to a prison facility in Florida for the remainder of his sentence So ordered Stewart,J. (2 True copies to marshal)	
1-14-77	Filed notice of appeal from Judgment filed 1-7-77 (Mailed notice to deft & U.S. Atty)	

A TRUE COPY
RAYMOND F. BUECHMANT, Clerk

By  Deputy Clerk

D

DOCKET ENTRIES FOR LOUIS REDA

CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO ☐ JUDGE/MAGISTRATE Assigned ☐ U.S. vs 02 - REDA, LOUIS
 OTHER MINOR OFFENSE MO ☐ 0858
 OTHER MISDEMEANOR MIS ☐ 0208 01 Disp./Sentence
 FELONY Fel ☒ District Office (LAST, FIRST, MIDDLE)

Case Filed Mo 09 Day 03 76 0873 02
 No. of Dets *02
 JUVENILE

U.S. MAG. CASE NO. 76-980

U.S. TITLE/SECTION
1: 846
21:812,841

OFFENSES CHARGED
Consp. to viol. Fedl Narco Laws.
Distr. & possess. of Cocaine II.

ORIGINAL COUNTS →
1
2-4

2/25

SUPERSEDING COUNTS →

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began 8-26-76	High Risk Date Information 9-3-76	1st Plea 9-9-76	Trial Set For Vot Dire
Summons Served	Indict. Waived	Final Plea	Trial Begun 12-17-76
First Appearance	In Charging District	Superseding Indict/Info	Trial Ended 12-30-76

BAILEY - RELEASE

☐ AMT ☐ Fugitive
☐ Denied ☐ Set ☐ Post. Bond
☐ PSA
 \$ 900
☐ Date ☐ 10% Cash
☐ Bail Not Made ☐ Surety Bond
☐ Status Changed (See Docket) ☐ Collateral ☐ Other

SENTENCE
Disposition of Charge
12-30-76 2-16-77
☐ Convicted ☐ On Ad. Charge
☐ Acquitted ☐ On Ad. Charge
☐ Dismissed ☐ On Ad. Charge
 On Government's Motion

MAGISTRATE

DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	INITIAL/NO.	OUTCOME
8/25/76	MDJ-08AB	PRELIMINARY EXAMINATION OR REMOVAL HEARING	DATE Scheduled	DISMISSED
		DATE Held		HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
		WAIVED NOT WAIVED	Tape Number	HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
		INTERVENING INDICTMENT		

OFFENSE (In Complaint) 21 USC 812,841(a)(1),841(b)(1)(A) and 846 - NARCOTICS

U.S. Attorney or Asst. **Federico E. Virella, Jr.** 791-1984

ATTORNEYS Defense ☐ CJA ☒ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

Paul Bergman 25 Edwy, NYC 10004 269-4900

* Show last names and suffix numbers of other defendants on same indictment/information.

01 - REDA

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
8/25/76		Complaint filed, complaint ordered sealed.	
8/27/76		Defendant presented, represented by Paul B. Bergman, Esq., 25 Broadway, N.Y. Defendant remanded into the custody of U.S. Marshal in lieu of \$40,000 cash or surety.	
8/30/76		On application of defendant's attorney, bail modified to \$30,000 PRB secured with \$3,000 cash and co-signed by a responsible person. Defendant released on bail, address: 1910 Hone Ave., Bx., N.Y., co-signer: Joseph Paino, address: 1 Sherwood Rd., Peekskill, N.Y.	
9/3/76		Indictment filed, 76 Cr. 873	
9-9-76		Def't. not present (Atty. present). Court directs a not guilty plea be entered. Bail cont'd at \$30,000 P.R.B. secured by \$3,000. Assigned to Stewart, J...Haight, J.	
9-10-76		Filed defts. notice of appearance by: (for plea) Paul Bergman of 25 Bdwy, NYC 10004.	

~~SECRET~~ A-6

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

IV. PROCEEDINGS (continued)		V. EXCLUDABLE DELAY				OTHER CODES
DATE	(DOCUMENT NO.)	Interval Section (a)	Start Date (b)	End Date (c)	Time (d)	
9-28-76	Filed govts. notice of readiness for trial.					
9-20-76	Hearing held. Bail application is denied. Bail remains at the same at \$50,000 surety or cash. Deft. is remanded. Stewart, J.					
10-07-76	Filed defts motion for discovery & inspection - ret. 10-21-76					
10-07-76	Filed defts motion for a bill of particulars - ret. 10-21-76					
10-18-76	BOTH DEFT'S present. Counsel present. Deft's application to substitute counsel Paul Bergman, Esq. for and in stead for both deft's JOSEPH ALLEN, Esq. Motion GRANTED. Pre/trial conf. held and to resume sine die.					
10-21-76	Filed defts. affdvt. and notice of motion for severance pursuant to rule 14 of the Federal Rules of Criminal Procedure.					
10-21-76	Filed defts. memorandum of law in support of motion for severance.					
10-22-76	Motion for severance granted. Trial scheduled for 11-1-76 at 10 A.M.....STEWART, J.					
10-29-76	Filed defts. affirmation and notice of motion for an order pursuant to Rule 12(b) (3) and Rule 41(e) of the F.R.C.P. suppressing and prohibiting the use of and ordering the return of all documents.					
10-29-76	Filed defts. affirmation and notice of motion to suppress oral statements and communications.					
10-29-76	Filed defts memorandum of law in support of motion to suppress.					
11-3-76	Filed Govts motion for discovery and inspection and bill of particulars.					
11-15-76	Filed Govt's requests to charge.					
11-15-76	Filed defts. request to charge.					
11-15-76	Filed Govt's supplemental requests to charge.					
11-30-76	Motion that defts. furnish exemplars to the Govt. Motion Granted. Govt's motion to consolidate Gino Reda open Ct. 3 with trial of Luis Reda. D'c. Res.. STEWART, J.					

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DATE	PROCEEDINGS
11-30-76	Deft. application to extend Luis Reda bail limits to included Dist. of So. Florida. Granted.. Deft. to report back immediately following Florida trial.....STEWART.J.
12-3-76	Filed defts. affdvt. and notice of motion to direct the government to provide deft. with transcript of prior trial.
12-3-76	Filed defts. affdvt. and notice of motion for severance pursuant to Rule 14 of the Federal Rules of criminal procedure.
12-3-76	Filed defts. affdvt. and notice of motion for severance of conspiracy count from substantive counts.
12-6-76	Filed defts. motion to suppress.
12-6-76	Filed defts. affdvt. and notice of motion to dismiss indictment on ground of insufficient evidence before grand jury.
12-8-76	Filed Memo-End on defts. motion directing the government to provide the deft. with transcript of prior trial Motion denied since deft. has not qualified for relief under the C.J. Act. So Ordered....STEWART.J. m/n
12-8-76	Filed Memo-End on defts. motion for severance of conspiracy count count from substantive counts Motion denied.....So Ordered...STEWART.J. m/n
12-7-76	Boths defts. atty. present. Luis Reda, True name! Louis Reda, Defts. motion for severance....Denied...Defts. motion for transcript Denied.....STEWART.J.
12-8-76	Pre-Trial conf. held. Referred to Magistrate Schriber.....STEWART.J.
12-9-76	Filed Memo-End on motion filed 12-3-76 Motion denied for the reasons stated in the oral opinion delivered in court on Dec. 7, 1976. So Ordered STEWART.J. m/n
12-10-76	Filed The following Magistrates papers: Appt. of counsel & Financial Affdvt.
12-17-76	Filed 10-18-76
12-17-76	Filed Govts. supplemental request for the voir dire of prospective jurors.
12-17-76	Filed Govt's memorandum of law.
12-17-76	Filed Govt's memorandum of law in opposition to deft. Luis Reda's motions to suppress and dismiss the indictment.
12-17-76	Filed defts. memorandum of law in support of motion to suppress.
12-17-76	Filed defts. memorandum of law in support of motion to suppress.

76 CR 873 CES

USA vs. Reda

DATE	DESCRIPTION
12-21-76	Filed Memo-End on defts. motion filed 12-06-76 Motion denied as per the oral opinion delivered in court on December 17, 1976. So Ordered... STEWART, J. m/n
12-21-76	Filed memo end on motion filed 12-6-76 Motion denied... So ordered Stewart, J. M/N
12-27-76	Filed deft's memorandum of law
12-27-76	Filed Govt's memorandum of law in opposition to defts motion for severance & other relief
12-17-76	Counsel for for deft Louis Reda Peyer Sherman Present Trial begun
12-20-76	Trial Cont'd
12-21-76	" "
12-22-76	" "
12-23-76	" "
12-24-76	" "
12-28-76	" "
12-29-76	" "
12-30-76	" " Jury verdict- DEft guilty on ct 1- Not guilty on ct 2 - Not guilty on ct 3 & guilty on ct 4. Bail cont'd \$30,000 3 Secured by \$ 3,000 C/S PSI ordered DEft to report to probation twice weekly. SENT adj to 2-16-77 at 3 P.M.....Stewart, J.
1-4-77	Filed Govt's supplemental requests to charge
1-4-77	Filed deft's requests to charge
1-4-77	Filed deft's requests to charge
1-4-77	Filed supplemental requests to charge
1-12-77	Filed memorandum -After a jury trial at which he was found guilty on cts 1 & 4 of the indictment DEft moved this Court pursuant to Rule 29 (c) of the Fed Rules of CrimProc for a judgment of acquittal Accordingly the motion is denied So orderd Stewart, J. M/N
1-14-77	Filed notice of appeal from Judgment filed 1-7-77 (Mailed notice to deft & U.S.
1-13-77	Filed commitment & entered money, delivered to Warden of MCC N.Y.C. on 1-16-77
1-31-77	Filed Transcript of record of proceedings, dated 9-13-76
1-31-77	Filed Transcript of record of proceedings, dated 12-2-76
2-3-77	File stipulation that certain exhibits become part of the record on appeal.

- Cont'd. -

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs
REDA Luis

76 CR 873 CES

Yr. Docket No. 02
Def.

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
02-16-77	<p>Filed Judgment and Commitment order (Atty present) that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO(?) YEARS Pursuant to Title 18, Section 3609, USC, as amended with provisions that deft. be placed in a JAIL TYPE institution for a period of FOUR (4) MONTHS as provided in aforesaid Section. Execution of the remainder of the sentence is suspended and the deft. is placed on Probation for a period of TWENTY (20) MONTHS, subject to the standing Probation Order of this Court. Pursuant to Title 21, USC, Sections 841(b)(1)(A), the deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement.</p> <p>Sentence imposed on both counts 1 and 4 and are to run concurrently with each other. The period of Probation and Special Parole imposed are also to run conc. with ea. other.</p> <p>Defendant was advised of his Rights pursuant to Rule 32(n) 2 of the Fed R. of Crim. Procedure.</p> <p>Bail is to continue pending appeal. - Stewart J issued copies.</p>				
8-25-77	<p>Fld notice of appeal from Judgment filed 2-16-77 (Mailed copy to deft's atty & U.S. Atty)</p>				

AO-257

Interval (per Section II) Start Date End Date Ltr. Tot. Code Days

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

[Signature]
Deputy Clerk

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

GINO RUDA and LUIS RUDA,

Defendants.

76 Cr. 873

The Grand Jury charges:

1. From on or about the 1st day of July, 1976 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, GINO RUDA and LUIS RUDA the defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Scheduled II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about August 16, 1976 in the vicinity of the Castle Hill Diner in the Bronx, New York, the defendant, GINO REDA had a conversation with federal agents John Reago and Daniel Fernandez concerning the sale of one pound of cocaine for a price of \$24,500.

2. On or about August 26, 1976, the defendant, GINO REDA had in his possession approximately one-half pound of cocaine.

3. On or about August 26, 1976, the defendant, LUIS REDA, possessed in his apartment, located at 1910 Bone Avenue, Bronx, New York, approximately one pound of cocaine.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On or about the 24th day of August, 1976 in the Southern District of New York, GINO REDA and LUIS REDA the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 0.69 grams of cocaine hydrochloride.

(Title 21, United States Code, Section 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 26th day of August, 1976 in the Southern District of New York, GINO REDA and LUIS REDA the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Scheduled II

~~4-12~~ A-12

narcotic drug controlled substance, to wit, approximately
one-half pound of cocaine hydrochloride.

(Title 21, United States Code, Section 812,
841(a)(1) and 841(b)(1)(A) and Title 18,
United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 26th day of August, 1976 in
the Southern District of New York, GINO REDA and LUIS REDA
the defendants, unlawfully, intentionally and knowingly did
possess with intent to distribute, a Schedule II narcotic
drug controlled substance, to wit, approximately one pound
of cocaine hydrochloride.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A) and Title 18,
United States Code, Section 2.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

CHARGE OF THE COURT FIRST TRIAL (GINO REDA)

10/14/76

jq 651

1019

CHARGE OF THE COURT

(Stewart, J.)

Madam Forelady, ladies and gentlemen, we have now come to that part of the case where the evidence is in, the lawyers have presented their arguments, and you are about to exercise your final role. That is to pass upon and decide the fact issues that are in this case.

It is your responsibility now to reach a just verdict in the determination of the charges against the defendant, and I know that you will deliberate towards reaching a verdict fairly, honestly, conscientiously.

I want to impress upon you that you are the sole judges of the facts. You pass upon the weight of the evidence, you resolve such conflicts as there may be in the evidence, you draw such reasonable inferences as may be warranted by the testimony or the exhibits in the case. My function is to instruct you on the law applicable to the case. It is your sworn duty to accept the law, not what the lawyers may have said the law is but as I say it to you in these instructions, and to apply it to the facts as you find the facts to be.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel either for the Government or for the defendant may

1 19 652

2 have said with respect to matters in evidence, whether
3 during the trial, in the form of an argument, or in summa-
4 tion, is not to be substituted for your own recollection
5 of the evidence.

6 Also, anything that I may have said during the
7 trial or at any time is not to be taken in place of your
8 own recollection. The case must be decided on the sworn
9 testimony of the witnesses and such exhibits as have been
10 received in evidence. You may not take into account or
11 consider in any way any extraneous matters. Only the
12 evidence presented to you in the courtroom may be considered
13 by you.

14 The fact that the Government is a party, that
15 is, that the prosecution is brought in the name of the
16 United States, entitles it to no greater consideration
17 than that accorded to any other party in the litigation.
18 By the same token, it is entitled to no less.

19 I want to remind you of certain general prin-
20 ciples of law which I have previously stated to you, most
21 of which I have previously stated to you. First, the
22 indictment is simply an accusation, a charge. It is not
23 evidence or proof of the guilt of the defendant. It is
24 not evidence of anything. It is merely a means utilized
25 by the Government to bring a defendant into court. It

1 jq 653

1021

2 will not be given any weight by you, neither the indictment
3 itself nor the fact that an indictment has been returned
4 against the defendant.

5 The defendant has pled not guilty. Therefore
6 the Government has the burden of establishing and proving
7 beyond a reasonable doubt, by competent evidence, the
8 charges made against him. Whether this burden is sus-
9 tained does not depend upon the number of witnesses or the
10 quantity of the testimony but rather on the nature and
11 quality of the testimony and evidence. It is a burden
12 that never shifts and remains upon the Government through-
13 out the entire trial.

14 A defendant does not have to prove his inno-
15 cence. On the contrary, a defendant is presumed to be
16 innocent of the accusations contained in the indictment
17 and the Government must prove a defendant's guilt beyond
18 a reasonable doubt.

19 This presumption of innocence was in the
20 defendant's favor when the trial began, it continued
21 during the trial, and it is in the defendant's favor even
22 now as I instruct you, and remains in the defendant's favor
23 during the course of your deliberations in the jury room.
24 It is overcome only if and when you are satisfied the
25 Government has sustained its burden of proving beyond a

jq 654

reasonable doubt the guilt of the defendant.

I have mentioned several times reasonable doubt. Reasonable doubt is such a doubt as would cause you to hesitate to act in a matter of importance in your own lives. It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is one which appeals to your reason, your judgment, your own experience. It is not caprice, speculation, whim. It is not an excuse to avoid the performance of an unpleasant duty. Speculative or imaginary qualms or misgivings are not reasonable doubts.

It is not necessary for the Government to prove the guilt of a defendant to a mathematical certainty or beyond all possible doubt. In this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact, which by its very nature is not susceptible of mathematical certainty. So the law is that in a criminal case, like this one, it is enough if proof that a defendant is guilty is established beyond a reasonable doubt, though not beyond all possible doubt.

If, after a fair and impartial consideration of all the evidence in the case or the lack of it, you can honestly say that you have such a doubt that would cause a

1 prudent person to hesitate before acting in matters of
2 importance to himself, then you have a reasonable doubt
3 and in that circumstance it is your duty to acquit.
4

5 On the other hand, if, after a fair and impar-
6 tial consideration of all the evidence, you can honestly
7 say you have such an abiding conviction of the guilt of the
8 defendant that you would be willing to act upon this con-
9 viction in important and weighty matters in the personal
10 affairs of your own life, then you have no reasonable doubt
11 and in that circumstance you should convict.

12 A reasonable doubt may arise not only from the
13 evidence presented but also from the lack of evidence,
14 since the burden, as I have told you, is always on the
15 Government to prove the defendant guilty of every essential
16 element of the crime charged beyond a reasonable doubt.

17 The charges in this case are contained in the
18 indictment, which alleges that the defendant Gino Reda
19 violated certain provisions of the federal narcotics laws,
20 specifically Sections 821, 841 and 846 of Title 21 of the
21 United States Code.

22 I am going to read to you the portions of these
23 federal laws that are referred to in the indictment and
24 that relate to this case. Section 841 states:

25 "It shall be unlawful for any person

1 jg 656

2 knowingly or intentionally to distribute or
3 possess with intent to distribute a controlled
4 substance."

5 Section 812 defines the term "controlled
6 substance" to include cocaine. Section 846 makes it a
7 crime to conspire or agree to commit certain crimes, includ-
8 ing the one I've just described.

9 I am going to read to you the four counts of
10 the indictment, and, incidentally, you may take a copy of
11 the indictment with you into the jury room. The first
12 count is the conspiracy count and it charges:

13 "On or about July 1, 1976, and continuing up
14 to September 3, 1976, the date of the filing of this
15 indictment, in the Southern District of New York, defendants
16 Gino Reda and Luis Reda and others to the Grand Jury
17 unknown unlawfully, intentionally and knowingly combined,
18 conspired, confederated and agreed together and with each
19 other to violate" various sections of the United States
20 laws.

21 "It was part of said conspiracy that the
22 defendants unlawfully, intentionally and knowingly would
23 distribute and possess with intent to distribute a Schedule
24 II narcotic controlled substance, the exact amount thereof
25 being unknown to the Grand Jury, in violation of various

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to

sections of the United States law."

As I already told you and I now instruct you, cocaine is a Schedule II narcotic controlled substance.

The other three counts are referred to as the substantive counts. Count Two states that on or about August 24, 1976, defendants Gino Reda and Luis Reda unlawfully, intentionally and knowingly did distribute and possess with the intent to distribute approximately .69 grams of cocaine.

In addition, Counts Three and Four state that on or about August 26, 1976, Gino Reda and Luis Reda unlawfully, intentionally and knowingly did possess with intent to distribute approximately one half pound of cocaine and approximately one pound of cocaine.

Each of these four counts charges a separate crime and each must be considered separately by you. And remember, although the indictment names two defendants, Gino Reda and Luis Reda, only Gino Reda is on trial before you now. It is only his guilt or innocence that you must announce in your verdict, although in considering his guilt or innocence you may have to determine the nature of the participation, if any, of Luis Reda and any of the unindicted coconspirators.

But in the determination of guilt or innocence as to this defendant you must bear in mind that guilt is

1 personal. The case stands or falls upon the proof or lack
2 of proof of the charge against Gino Reda only and not
3 against somebody else. You may not draw any inference,
4 favorable or unfavorable, towards the Government or the
5 defendant from the fact that only Gino Reda is on trial
6 before you or that certain persons were not named as
7 defendants. These matters are wholly outside your concern
8 and have no bearing on your function as jurors.

9
10 I am going to tell you the elements of the
11 conspiracy, each of which you must find beyond a reasonable
12 doubt in order to find the defendant guilty of conspiracy.

13 First, that sometime between July 1, 1976
14 and September 3, 1976 an agreement existed among the
15 defendants or between the defendant and another person
16 other than a Government agent.

17 Second, that it was part of this agreement to
18 distribute and to possess with the intent to distribute
19 cocaine.

20 Third, that the defendant Gino Reda knowingly
21 and wilfully associated himself with the conspiracy.

22 And fourth, that any one of the conspirators,
23 whether the defendant on trial or any other alleged
24 conspirator, knowingly committed at least one of the overt
25 acts set forth in the indictment at or about the time and

1

jg

2

place alleged.

3

4

5

6

I haven't read you the overt acts yet. They are part of Count One and I'll come back to them in a few moments. I am going back to the first element, the element of agreement, or conspiracy.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

What is a conspiracy? The idea of a conspiracy is simple. A conspiracy is a combination, an agreement, an understanding of two or more persons by concerted action to accomplish a criminal or unlawful purpose. in this instance to distribute and to possess with intent to distribute cocaine. The gist of the crime is the unlawful combination or agreement to violate the law. The success or failure of a conspiracy is immaterial to the question of guilt or innocence of a conspirator.

Conspiracy has sometimes been called a partnership for criminal purposes in which every partner becomes the agent of every other partner. However, to establish a conspiracy the Government is not required to show that two or more persons sat around a table and orally or in writing entered into a solemn compact stating that they have formed a conspiracy to violate the law, setting forth the details of the plan, the means by which the unlawful project is to be carried out or the part to be played by each conspirator.

jq

It would be extraordinary if there were such a formal agreement, either written or oral. Common sense will tell you that when persons in fact undertake to enter into a criminal conspiracy, much is left to the unexpressed understanding. The very nature of a conspiracy calls for secrecy, rendering detection difficult.

Thus, it is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. Express language, specific words are not required to indicate assent or attachment to the conspiracy. Proof concerning the accomplishment of the goal of a conspiracy may be the most persuasive evidence of the existence of the conspiracy itself. However, even if the conspiracy should fail of its purpose, it is still punishable as a crime.

In determining whether there has been an unlawful agreement or understanding, you may judge acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal purpose. Usually the only evidence available is that of disconnected acts on the part of the alleged individual conspirators. However, these acts and conduct when taken together in connection with each other and with the reasonable inferences

1 19

2 flowing therefrom may show a conspiracy or agreement to
3 secure a particular result as satisfactorily and conclusively
4 as more direct proof.

5 If, upon such consideration of all the evidence,
6 direct or circumstantial, you find beyond a reasonable
7 doubt that the minds of the alleged conspirators met in an
8 understanding way and that they agreed, as I have explained
9 the conspiratorial agreement to you, to work together in
10 furtherance of the unlawful scheme alleged in the indict-
11 ment, then proof of the existence of a conspiracy is
12 established.

13 As to the second element, that it was part of
14 the agreement to distribute and possess with the intent
15 to distribute cocaine, the indictment alleges that the
16 conspiracy was both to distribute and possess with intent
17 to distribute cocaine. The Government's proof may, but
18 need not, establish both of these objectives of the con-
19 spiracy. If you find that the agreement has as its
20 object either one of these unlawful activities, then you
21 may be satisfied that the existence of the conspiracy is
22 established.

23 If you determine beyond a reasonable doubt
24 that a conspiracy as charge existed, then you come to the
25 third element. You will recall that this requires the

1 jq
2 Government to establish that the defendant on trial, Gino
3 Reda, participated in the conspiracy with knowledge of its
4 unlawful purposes and in furtherance of its unlawful
5 objectives. To determine a defendant's membership in a
6 conspiracy you must consider, on all the evidence and the
7 reasonable inferences to be drawn therefrom, whether he
8 knowingly and intentionally participated in it.

9 Thus, a defendant's mere knowledge of the
10 existence of a conspiracy or of any illegal act on the part
11 of any alleged conspirator or his mere association with
12 one or more alleged conspirators is not sufficient to
13 establish his membership in the conspiracy. The Government
14 must establish beyond a reasonable doubt that the defendant
15 was aware of the conspiracy's basic purpose and object and
16 that he entered into the conspiracy with a specific and
17 criminal intent, a purpose, that is, to violate the law.

18 On the other hand, to become a member of a
19 conspiracy, a defendant need not know all the other members
20 of the conspiracy nor be fully informed as to all the
21 details of the conspiracy. Each member may perform
22 separate and distinct acts and at different times. Some
23 conspirators may play major roles while others play minor
24 roles. But if a defendant, with understanding of the
25 unlawful character of the conspiracy, intentionally engaged

1 jg

1031

2 in or advised or assisted, for the purpose of furthering,
3 the illegal undertaking, he thereby becomes a knowing
4 and wilful participant.

5 Knowledge and intent obviously exist in the
6 mind. It is not possible to look into one's mind to see
7 what went on. So the only way you have for arriving at
8 a decision concerning these questions is for you to take
9 into consideration all the facts and circumstances shown
10 by the evidence and to determine from all such facts and
11 circumstances whether the requisite knowledge and intent
12 were present at the time in question. Direct proof is
13 unnecessary. Knowledge and intent may be inferred from
14 all the surrounding circumstances.

15 You will note that I have used the terms
16 "unlawfully, wilfully and knowingly." They mean that you
17 must be satisfied beyond a reasonable doubt that the
18 defendant knew what he was doing, that he did it deliberately
19 and voluntarily, and not because of some mistake, accident,
20 carelessness, inadvertence, coercion or some other innocent
21 reason. It is not necessary, of course, that the
22 defendant knew he was violating any particular law. It
23 is sufficient if you are convinced beyond a reasonable
24 doubt that he was aware of the general unlawful nature of
25 his acts.

1 19
2 Once you have found a conspiracy to exist, if
3 you do, and that the defendant Gino Reda knowingly partici-
4 pated in it, the extent of his individual participation
5 has no bearing on his guilt or innocence. The guilt of
6 a conspirator is not measured by the extent or the duration
7 of his participation. Even if he participated in it to
8 a degree more limited than that of the other coconspirators,
9 he is equally culpable so long as he was in fact a con-
10 spirator.

11 Once again, mere association does not make one
12 a member of a conspiracy, nor is knowledge without partici-
13 pation sufficient, nor is knowledge of or presence at the
14 commission of a narcotics transaction, without more,
15 sufficient to make a defendant a conspirator. What is
16 necessary is that the defendant participated with knowledge
17 of at least some of the purposes of the conspiracy and
18 with intent to aid in the furtherance of its unlawful acts.

19 When people enter into a conspiracy to accom-
20 plish an unlawful end, they become agents for one another
21 in carrying out the conspiracy. Hence, the acts or
22 declarations of one conspirator in the course of the con-
23 spiracy and in furtherance of the common purposes are
24 deemed to be the acts of all and all are responsible for
25 such acts.

1 jg
2 Accordingly, if you find, in accordance with
3 these instructions, that the alleged conspiracy existed
4 and that the defendant Gino Reda was a participant in it,
5 then acts done and statements and declarations made in
6 furtherance of the conspiracy by any other person found by
7 you to have been a member of the conspiracy may be consid-
8 ered against the defendant Gino Reda even though such
9 acts or declarations were made in the absence of and
10 without the knowledge of this defendant.

11 The indictment charges that the conspiracy
12 existed from on or about the 1st day of July, 1976 and
13 continuously until the date of the indictment on September
14 3, 1976. It is not essential that the Government prove
15 that the conspiracy started and ended on or about these
16 specific dates. It is sufficient if you find that in
17 fact the conspiracy was formed and existed for some time
18 within the period set forth in the indictment and that at
19 least one of the overt acts, which I am about to come to,
20 was committed in furtherance thereof within that period.

21 I've mentioned already that the fourth essen-
22 tial element of the crime of conspiracy is that an overt
23 act intended to effect the object of the conspiracy had
24 been committed by at least one of the coconspirators after
25 the unlawful agreement has been made. An overt act is a

jq

step, statement, action, conduct taken to achieve or further the objective of the conspiracy. The overt act need not be criminal nor the very crime which is the object of the conspiracy.

Thus, the overt acts listed in the indictment are not necessarily by themselves criminal or illegal. If you find that any of these acts were committed for the purpose of advancing the unlawful enterprise, regardless of whether it was an act which by itself would be innocent, then the overt act requirement has been satisfied.

The overt acts listed in the indictment are:

"1. On or about August 18, 1976, in the vicinity of the Castle Hill Diner in the Bronx, New York, the defendant Gino Reda had a conversation with federal agents John Reape and Daniel Fernandez concerning the sale of one pound of cocaine for a price of \$24,800.

"2. On or about August 26, 1976, the defendant Gino Reda had in his possession approximately one half pound of cocaine.

"3. On or about August 26, 1976, the defendant Luis Reda possessed in his apartment, located at 1910 Hone Avenue, Bronx, New York, approximately one pound of cocaine."

It is not necessary for the Government to prove

1
2 that all the members of the conspiracy committed or partici-
3 pated in a particular overt act, since the act of anyone
4 done in furtherance of the conspiracy becomes the act of
5 all the other members. Also, the Government is not
6 required to prove each of the overt acts. It is suffi-
7 cient if it proves the commission of at least one of the
8 overt acts at or about the time alleged.

9 Now the three substantive charges. Count
10 Two, the first of the substantive charges, charges that
11 on or about the 24th day of August, 1976, in the Southern
12 District of New York, defendants Gino Reda and Luis Reda
13 unlawfully, intentionally and knowingly did distribute
14 and possess with intent to distribute a Schedule II narcotic
15 drug controlled substance, to wit approximately .69 grams
16 of cocaine.

17 Count Three charges: On or about the 26th
18 day of August, 1976, defendants Gino Reda and Luis Reda
19 unlawfully, intentionally and knowingly did possess with
20 intent to distribute approximately one half pound of
21 cocaine.

22 Count Four charges: On or about the 26th day
23 of August, 1976, Gino Reda and Luis Reda unlawfully,
24 intentionally and knowingly did possess with intent to
25 distribute approximately one pound of cocaine.

1 jg

1036

2 Before you can find Gino Reda guilty of the
3 events as charged in the substantive counts Two, Three
4 and Four, you must be convinced beyond a reasonable doubt
5 that the Government has proved each of the following
6 elements. The elements on the substantive counts are as
7 follows:

8 As to Count Two, the first element is that on
9 or about August 24th Gino Reda distributed and possessed
10 with intent to distribute cocaine. As to Counts Three
11 and Four, the first element is that on or about August 26th
12 the defendant Gino Reda possessed with the intent to dis-
13 tribute cocaine.

14 The second element for all substantive counts
15 is that the defendant acted unlawfully, intentionally and
16 knowingly, and the third element is that the substance
17 involved was in fact cocaine.

18 Concerning these elements, as to distributing
19 or possessing with intent to distribute, these terms again
20 are used in the alternative. Therefore you may find the
21 first element established if you are satisfied either that
22 the defendant Gino Reda distributed cocaine or that he
23 possessed cocaine with intent to distribute. You need
24 not find that he did both.

25 What do these terms mean? The word "distribute"

1 jg
2 means the actual, constructive or attempted transfer of
3 the item. The word "possess" has a common, everyday
4 meaning, that is, to have something within one's control.
5 But to have something within one's control does not
6 necessarily mean to have it in your hand or pocket.

7 There are two kinds of possession, actual and
8 constructive. "Actual" means that a defendant has
9 personal, manual, physical control of the narcotics.
10 "Constructive possession" means that although the narcotics
11 are in the physical possession of another person, the
12 defendant knowingly has power to exercise control over them
13 or their distribution.

14 Such control may be demonstrated by a working
15 relationship between the person having such control and
16 the person with actual physical custody or by the ability
17 of such person to dictate the movement or disposition of
18 the drugs. Either type of possession may be proved by
19 direct or circumstantial evidence or a combination of
20 both.

21 The word "intent" refers to a person's state
22 of mind. Thus, the phrase "possess with intent to dis-
23 tribute" can fairly be stated to mean to control an item
24 with the state of mind or purpose of transferring that
25 item.

1 jg
2 As for the element "unlawfully, wilfully and
3 knowingly," as I have previously explained to you, you
4 must be satisfied beyond a reasonable doubt that the
5 defendant knew what he was doing and that he did it
6 deliberately and voluntar-ly and not because of a mistake,
7 accident, negligence or some other innocent reason.

8 An act is wilful if it is done knowingly and
9 deliberately, with an evil motive or purpose. "Unlawfully"
10 means contrary to the law. I remind you that in determin-
11 ing whether the defendant has acted knowingly and wilfully
12 it is not necessary that the defendant knew that he was
13 violating any particular law. It is sufficient if you
14 are convinced beyond a reasonable doubt that the defendant
15 was aware of the general unlawful nature of acts.

16 As to the third element of the substantive
17 counts, the indictment charges that the narcotic drug
18 involved is cocaine, and you will recall that I have
19 instructed you that cocaine is a Schedule II narcotic drug
20 controlled substance. You must determine beyond a reason-
21 able doubt that the substance in evidence in Government's
22 Exhibits 1, 2, 3, 4 and 5 are in fact cocaine.

23 You have heard the defendant's testimony and
24 his attorney's summation. The defendant contends that he
25 is not criminally liable because he did not commit any of

1 jg

2 the acts alleged by the Government voluntarily and with
3 the intent to violate the law. Further, defendant con-
4 tends that he is not criminally liable because the trans-
5 actions were induced by Government employees. This
6 second contention is referred to as the defense of entrap-
7 ment.

8 Taking the question of intent first, I have
9 previously instructed you that it is an element of all the
10 offenses charged that the defendant acted intentionally
11 and knowingly. This means that you must be satisfied
12 beyond a reasonable doubt that the defendant knew what he
13 was doing and that he did it deliberately and voluntarily
14 and not because of some mistake, carelessness, inadvertence,
15 coercion or some other innocent reason.

16 As I have mentioned to you, knowledge and
17 intent obviously exist in the mind. It is not possible
18 to look into one's mind. So the only way you have for
19 arriving at a decision concerning these questions is for
20 you to take into consideration all the facts and circum-
21 stances shown by the evidence and to determine from such
22 facts and circumstances whether the requisite knowledge
23 and intent were present at the time in question.

24 Intent may also be inferred from evidence of
25 prior similar conduct of the defendant on this subject.

1 jg

1040

2 Evidence of an alleged earlier similar criminal act may
3 not be considered as proof of the crimes here charged.

4 However, if you should find beyond a reasonable doubt from
5 other evidence in the case that the accused did the act
6 charged in the count under deliberation, then you may
7 consider evidence as to an alleged earlier similar act or
8 similar transaction in determining the state of mind or
9 intent with which the accused did the act charged in this
10 particular count.

11 Where proof of an alleged earlier act or trans-
12 action of a like nature is established by evidence which
13 is clear and conclusive, you may, but are not obliged to,
14 draw an inference and find that in doing the act charged
15 in the particular count under deliberation the accused
16 acted wilfully and with specific intent and not because
17 of mistake or accident or other innocent reason.

18 Now the entrapment defense. Because the word
19 "entrapment" has a particular legal meaning in this con-
20 text, I want to explain it to you carefully. I want to
21 be sure you understand that the legal meaning of "entrap-
22 ment" is not the same as its popular meaning.

23 Law enforcement officials in their efforts to
24 enforce the criminal laws and to apprehend those engaged
25 in criminal activities may resort to traps, decoys, decep-
tion. They may also use informants, artifices and strate-

jg

gams mainly employed to catch those engaged in criminal enterprises.

The nature of some types of crime carried on in great secrecy and deviousness is such that the wary criminal can rarely be detected unless such methods are used by law enforcement officers. Such methods are not in any way forbidden by law and often are necessary in the detection and prosecution of certain crimes.

Whether or not you personally agree with the policy of using such methods is not an issue and it is not before you. The fact that Government officials or employees merely afford opportunities or facilities to one who is ready and willing to violate the law when the opportunity presents itself does not constitute entrapment.

When, for example, the Government has reasonable grounds for believing that a person has engaged in the illicit sale of narcotics, it is not unlawful entrapment for a Government agent to pretend to be someone else and to offer directly or through an informer or other decoy to purchase narcotics from such suspected person.

However, in their efforts to enforce the laws, the Government officials or employees may not entrap an innocent person who, except for the Government's inducement, would not engage in the criminal conduct charged.

1 jg
2 Thus, if the criminal design originates with
3 Government employees and they implant in the mind of an
4 otherwise innocent person the disposition to commit the
5 offense charged and induce its commission, the prosecution
6 may not succeed. You must look to the behavior of the
7 individual defendant, not to the behavior of the Government
8 agent. You must determine if this person would not have
9 been predisposed to commit the crime if the Government agent
10 had not acted as he had.

11 Entrapment occurs only when the criminal
12 conduct was the product of the creative activity of law
13 enforcement employees, that is, if they initiate, incite,
14 induce, persuade or lure an otherwise innocent person to
15 commit a crime and to engage in criminal conduct. And
16 if that occurs, the Government may not avail itself of the
17 fruits of those instigating activities. Such conduct
18 offends the public conscience. And so, while the crime
19 may have been committed, the Government is estopped from
20 benefitting by the improper conduct of its own officers
21 or employees.

22 Here the defendant contends he was free of
23 any criminal purpose to deal in cocaine transactions and
24 that he had no previous disposition, intent or purpose to
25 engage in such criminal activity but was induced to engage

19

in the conduct charged against him by the creative activity of Government officials and employees. The Government denies this and contends that defendant was merely afforded the opportunity on each occasion to commit the offense and that he readily and willingly responded thereto and engaged in each transaction which was the subject of the counts of the indictment without inducement of any kind.

In this case, Agents Fernandez and Reape are Government agents, and John Tufo, during the period you find he acted as an informer for the Government, may also be considered a Government employee. If you find, on the basis of credible evidence, that a Government agent by initiating the illegal conduct induced the defendant to engage in such conduct, then the Government must prove beyond a reasonable doubt that the inducement was not the cause of the crime, that is, that the defendant was ready and willing to commit the crime without any persuasion when the opportunity offered itself.

The proof of this may be evidence of defendant's similar conduct on occasions other than those which are particularly charged in the indictment, or a willingness to commit the crime charged as evidenced by defendant's ready response to the offered opportunity.

You will recall what I instructed you a few

1 19

2 moments ago as to the use of evidence of prior similar
3 conduct on the issue of intent. I instructed you that
4 such evidence may not be considered as proof of the crimes
5 charged in the current indictment.

6 The same is true when you consider such evidence
7 on the issue of entrapment. It may only be considered
8 specifically to counter the defense of entrapment and to
9 support the Government's claim that the defendant was
10 predisposed or had a propensity to commit the crime in
11 question. Just how much weight you give to this evidence
12 is for you to decide.

13 If you find that the defendant had no previous
14 interest, purpose, intent or predisposition to commit any
15 offense of the character and type charged here, and did
16 so only because he was directly induced, persuaded or
17 talked into it by a Government agent, then the defense of
18 entrapment has been established and you should acquit the
19 defendant.

20 If, on the other hand, assuming first that you
21 find some evidence that a Government agent prompted the
22 defendant to engage in criminal activity, you find that
23 the defendant has shown beyond a reasonable doubt that the
24 defendant was ready, willing or predisposed to engage in
25 criminal action and was only afforded an opportunity by

1 jg
2 the Government agent or employee, then the defense of
3 entrapment is unsuccessful.

4 Now a number of more general rules. I have
5 told you that the Government must prove its case beyond a
6 reasonable doubt and I've explained what that means. The
7 defense is not required to prove its case by any particular
8 number of witnesses or by documentary or other particular
9 type of evidence.

10 There are two types of evidence on which you
11 may properly rely. One is direct evidence. That is
12 where a witness testifies to what he saw, heard or observed,
13 what he knows of his own knowledge, something which comes
14 to him by virtue of his senses. The other is circumstan-
15 tial evidence.

16 Circumstantial evidence is evidence of facts
17 or circumstances from which one may infer connected facts
18 which reasonably follow in the common experience of mankind.
19 Circumstantial evidence is that evidence which tends to
20 prove a disputed fact by proof of the other facts. There
21 is a simple example of circumstantial evidence that is
22 often used in this courthouse.

23 Assume thjat when you entered the courthouse
24 this morning the sun was shining, it was a nice day.
25 Also assume that in this courtroom the blinds are drawn,

1 jg 1046
2 the drapes are drawn, you cannot look outside. As you
3 are sitting here, someone walks in with an umbrella which
4 is dripping wet. Somebody else walks in in a raincoat
5 which is also dripping wet. You cannot look out of the
6 courtroom and you cannot see whether or not it is in fact
7 raining. But on a combination of the facts which I have
8 just asked you to assume it would be reasonable and logical
9 for you to conclude that it has been raining. That's
10 all there is to circumstantial evidence. You infer on
11 the basis of reason and experience from an established
12 fact the existence of some other facts.

13 Circumstantial evidence is of no less value
14 than direct evidence, for as a general rule the law makes
15 no distinction between direct and circumstantial evidence
16 but simply requires that before convicting a defendant the
17 jury must be satisfied of the defendant's guilt beyond a
18 reasonable doubt from all the evidence in the case.

19 In addition, there are times when different
20 inferences may be drawn from a certain set of facts. An
21 inference is a deduction or a conclusion which the jury is
22 permitted to draw from facts which have been established
23 by either direct or circumstantial evidence in the case.
24 But an inference is not drawn by speculation or guesswork.
25 Rather, it must be arrived at by an exercise of your reason

1 jg

1047

2 and common sense.

3 So, while you are considering the evidence,
4 you are permitted to draw from the facts which you find
5 to have been proven such reasonable inferences as seem
6 justified in the light of your experience. But here
7 again let me remind you that whether based on direct or
8 circumstantial evidence or the logical, reasonable inferences
9 drawn from such evidence, you must be satisfied of the
10 guilt of the defendant beyond a reasonable doubt.

11 You are the sole judges of the credibility
12 and the truthfulness of each witness. In weighing the
13 testimony of each witness, you should consider his relation-
14 ship to the Government, the extent of the witness' interest
15 in the outcome of the case, his manner of testifying, his
16 appearance and conduct while on the witness stand, his
17 intelligence, the strength or weakness of his recollection,
18 and the extent to which he has been corroborated or contra-
19 dicted, if at all, by the other credible witnesses.

20 The ultimate question for you to decide is
21 did the witness tell the truth, and to this end you are
22 to use your everyday common sense. Because a particular
23 witness may be a law enforcement officer, such as an agent
24 of the Drug Enforcement Administration, does not mean that
25 his testimony is deserving of any special consideration or

2 any greater weight by reason of that fact.

3 Now, there has been testimony by John Tufo,
4 who was acting as an informer for the Government. The
5 use of informers by the Government is not forbidden,
6 provided that the use of such services in no way impinges
7 upon the right of the defendants. Whether or not you
8 personally agree with this law enforcement policy is not
9 an issue. You must consider Mr. Tufo's testimony then
10 just as you would any other witnesses.

11 In determining the credibility of any witness,
12 you may consider whether he has any motive to falsify his
13 testimony. In this regard you may consider any relation-
14 ship a witness may have to either side of the case, the
15 manner in which he may be affected by the verdict, whether
16 the witness has been given or promised any reward, such as
17 freedom from prosecution or punishment, or whether the
18 witness has any interest in the case, such as a desire to
19 seek revenge.

20 Of course, the existence of any of these
21 factors does not mean that a witness will color or falsify
22 his testimony. They are merely factors for you to consider
23 in evaluating credibility.

24 A witness may be discredited or impeached by
25 contradictory testimony or evidence that at another time

1 jg

2 the witness made statements which are inconsistent with the
3 testimony given during the trial. If you believe that
4 any witness has been impeached or discredited, it is your
5 province to give the testimony of that witness the credibil-
6 ity, if any, you think it deserves.

7 You will recall that during the trial, when
8 Agent Fernandez was testifying, he was questioned as to
9 the basis for a statement contained in the complaint he
10 signed. I instructed you then, and I want to remind you
11 now, that the law states that it is proper for the agent
12 who signed a complaint to rely on hearsay evidence.

13 Hearsay evidence is information which the agent
14 obtains from others and not from his own direct experience
15 or knowledge. Whether the statement contained in the com-
16 plaint is true is a matter to be determined by you from all
17 the evidence.

18 As you know, the defendant here chose to testify.
19 You must consider how far it is credible. Obviously, the
20 defendant has a deep personal interest in the result of
21 this prosecution. Indeed, it is fair to say that he has
22 the greatest stake in its outcome. Interest creates a
23 motive for false testimony. The greater the interest, the
24 stronger the motive, and a defendant's interest in the
25 result of his trial is of a character possessed by no other

1 jg

2 witness.

3 In appraising his credibility, you may take
4 that factor into consideration. However, it by no means
5 follows that simply because a person has a vital interest
6 in the end result he is not capable of telling a truthful,
7 candid and straightforward story. It is for you to decide
8 to what extent, if at all, his interest has affected or
9 colored his testimony. If you find that any witness has
10 deliberately testified falsely as to any material fact,
11 you may disregard all of his testimony or you may accept
12 that part of his testimony which you believe is truthful
13 and which you find to be corroborated or supported by other
14 evidence in the case.

15 The rules of evidence ordinarily do not permit
16 witnesses to testify as to opinions or conclusions. An
17 exception to this rule exists as to those whom we call
18 expert witnesses. Witnesses who by education or experience
19 have become expert in some art, some science, profession
20 or calling may state their opinions and the reasons for
21 such opinions on the subject concerning which they have
22 special knowledge.

23 Joseph Barbato, the Drug Enforcement Adminis-
24 tration chemist whom you heard testify, is such an expert
25 witnesses. You may consider the expert's qualifications,

1 jg

1051

2 his opinion and the reasons he stated for such an opinion,
3 and give his testimony such weight as you feel it deserves.

4 If you decide that the opinion of the expert
5 is not based upon sufficient education and experience, or
6 if you should find that the reasons given in support of the
7 opinion are not sound, or if you feel it is outweighed by
8 any other evidence, you may disregard the opinion.

9 However, should you find that the opinion and
10 the reasons given in support thereof are sound and credible,
11 you may consider it together with all the other evidence
12 before you in reaching your determination as to the disputed
13 issues in this case.

14 You are also instructed that there is no duty
15 upon either side in this case to call witnesses whose
16 testimony would be merely cumulative of testimony already
17 in evidence.

18 Under your oath as jurors, you are not to be
19 guided or swayed in any manner by sympathy in your deliber-
20 ations or discussions. You are to be guided solely by
21 the evidence in the case. The crucial, hard core question
22 that you must ask yourself as you sift through the evidence
23 is where you find the truth. The only effort is to find
24 out what is the truth, and justice triumphs only if you find
25 out what the truth is.

1 jg
2 You are to determine the guilt or innocence of
3 the defendant solely on the basis of the evidence or lack
4 of evidence before you and subject to the law as I have
5 charged you.

6 If you have a reasonable doubt as to the
7 defendant's guilt, you should not hesitate for any reason
8 to find a verdict of acquittal. But if, on the other hand,
9 you should find that the Government has met its responsibil-
10 ity in proving the defendant's guilt beyond a reasonable
11 doubt, you should not hesitate because of sympathy or any
12 other reason to render a verdict of guilty.

13 During the trial, from time ot time there have
14 been objections made by one or the other of the parties.
15 It is the duty of the lawyer, I'm sure you recognize this,
16 to object when he believes he should, and you should not
17 be prejudiced in any way against anybody because of an
18 objection made or because of my ruling on an objection.

19 As I told you at the outset, you cannot allow
20 a consideration of the punishment which may be inflicted
21 upon a defendant, if convicted, to influence your verdict
22 in any way or to enter into your deliberations. The duty
23 of imposing sentence rests exclusively with me. Your
24 function is to weigh the evidence and to determine guilt
25 or innocence solely on the basis of the evidence and the law

1 jg
2 which I have given to you.

3 Now, the purpose of your deliberations is to
4 exchange views with your fellow jurors, to discuss and
5 consider the evidence, to listen to each others' arguments,
6 to present your own views, and to reach a unanimous verdict
7 as to the defendant based solely on the evidence, if you
8 can do so without violence to your own individual judgments.

9 Each of you must decide the case for yourself,
10 but do so only after an impartial consideration of all of
11 the evidence in the case and after a discussion with your
12 fellow jurors. Do not hesitate to reexamine your views
13 and to change your opinion when, after discussion, it
14 appears that you are in error. But if, after carefully
15 considering all the evidence in the case and also after
16 considering the arguments of your fellow jurors, you still
17 have a conscientious view which differs from the rest of
18 the jury, you are not to yield your views simply because
19 you are outnumbered.

20 If in the course of your deliberations you
21 wish to examine any of the exhibits, if you wish to have
22 any of the testimony read to you, or if there is anything
23 else which you need from me, the forelady will hand a note
24 to the marshal and we will do everything we can to help
25 you.

1 jg
2 In communicating with me, Madam Forelady, do
3 not in any way indicate what your vote at the moment might
4 be. You must return a verdict on each count separately,
5 and your verdict must be unanimous.

6 Your oath sums up your duty: Without fear or
7 favor of anyone, you will truly try the issues between
8 this defendant and the Government based solely upon the
9 evidence and my instructions as to the law. This is
10 important to the Government. It is important to the
11 defendant.

12 Counsel?

13 MR. STAHL: No objections.

14 MR. VIRELLA: No objections.

15 THE COURT: The alternate jurors are excused.

16 (Two alternate jurors excused)

17 (Two United States Marshals were
18 sworn.)

19 THE COURT: All right, ladies and gentlemen,
20 you may retire.

21 (At 5.48 p.m., the jury retired to commence
22 their deliberations.)

23 MR. STAHL: Your Honor, when I made the
24 statement no objections to the charge, of course I noted an
25 objection when we had the charge conference to the Court's

CHARGE OF THE COURT SECOND TRIAL (GINO AND LOUIS REDA)

USA v. REDA 1
76 Cr. 873
12/29/76 2

rdlm 1

922

CHARGE OF THE COURT

(Stewart, C.)

(Pause.)

THE COURT: Ladies and gentlemen, we have now come to that part of the case where the evidence is in, the lawyers have presented their arguments and you are about to exercise your final role, to pass upon and decide the factual issues in this case. It is your responsibility to reach a just verdict in the determination of the charges against the defendants. I know that you will deliberate towards reaching a verdict fairly, honestly and conscientiously.

As I have told you, you are the sole and exclusive judges of the facts. You pass upon the weight of the evidence. You resolve such conflicts as there may be in the evidence. You draw such reasonable inferences as may be warranted by the testimony or the exhibits in the case.

My function now is to instruct you on the law applicable to the case. It is your sworn duty to accept the law as I tell it to you in these instructions, not what the lawyers may have said the law is, and to apply the law to the facts as you find the facts.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that

rdlm 2

counsel either for the Government or for the defendants may have said with respect to matters in evidence, whether during the trial, in argument or in summation, is not to be substituted for your own recollection of the evidence.

Also, anything that I may have said at any time or even in the course of these instructions as to any matters of evidence is not to be taken in place of your own recollection of the evidence.

As I have told you, the case must be decided upon the sworn testimony of the witnesses and the exhibits which have been received in evidence. You may not take into account or consider in any way any extraneous matters, such as anything outside this courtroom or in the jury room or the courthouse or any other place. Only the evidence presented to you in this courtroom may be considered by you. In this connection you have heard reference to prior proceedings by some of the witnesses and counsel. You may not take into account or consider in your deliberations in any way anything with respect to any prior proceeding except what you have heard from the witnesses or has been received in evidence. The fact that the Government is a party, that is, that the prosecution is brought in the name of the United States, entitles it to no greater consideration than that accorded to any other party to the litigation. By

1 rdlm 3

2 the same token, it is entitled to no less consideration.

3 There are a few general principles of law, most
4 of which I have already stated to you, but which I want to
5 repeat. The indictment is simply an accusation, a charge.
6 It is not evidence of proof of the guilt of the defendants.
7 It is not evidence of anything. You will give no weight
8 to the fact that an indictment has been returned against
9 these two defendants.

10 The defendants have pled not guilty. Therefore,
11 the Government has the burden of establishing and proving
12 beyond a reasonable doubt by competent evidence, the charges
13 made against them. Whether this burden is sustained, does
14 not depend upon the number of witnesses or the quantity of
15 the testimony, but rather, on the nature and quality of
16 the testimony and other evidence. It is a burden that
17 never shifts but remains on the Government throughout the
18 entire trial and is still upon the Government.

19 A defendant does not have to prove his innocence.
20 On the contrary, a defendant is presumed to be innocent
21 of the charges made in the indictment, and this presumption
22 of innocence was in the defendant's favor when the trial
23 began, was present during the trial, it is in the defendant's
24 favor now and remains in the defendant's favor during the
25 course of your deliberations in the jury room. It is

1 rdlm 4

2 removed only if and when you are satisfied that the Govern-
3 ment has sustained to your satisfaction its burden of
4 proving beyond a reasonable doubt the guilt of the defendants
5 or either of them. It is for this reason that a defendant
6 does not need to take the witness stand. In fact, the
7 defendants in this case have not testified. The Constitution
8 and the laws of the United States provide that in any
9 criminal matter, a defendant is under no obligation to
10 come forward to testify or, indeed, to produce any evidence,
11 because the burden of proving a violation is solely,
12 exclusively upon the prosecution. So you may not draw any
13 inference from a defendant's failure to do so. In fact,
14 you must not speculate upon it or consider it in any way
15 in your deliberations. A defendant has the absolute right
16 not to make any defense and to rely upon the Government's
17 burden to prove him guilty beyond a reasonable doubt.

18 I have mentioned, several times, reasonable doubt.
19 Reasonable doubt is such a doubt as would cause you to
20 hesitate to act in a matter of importance in your own lives.
21 It is a doubt which a reasonable person has after carefully
22 weighing all the evidence. Reasonable doubt is one which
23 appeals to your reason, your judgment, your own experience.
24 It is not caprice, speculation, whim. It is not an excuse
25 to avoid the performance of an unpleasant duty. Speculative

1 rdlm 5
2 or imaginary qualms or misgivings are not reasonable doubts.
3 In this world in which we live, it is practically impossible
4 for a person to be absolutely and completely convinced of
5 any controverted fact which by its nature is not susceptible
6 of mathematical certainty. In consequence the law is, in
7 a criminal case like this, it is enough if proof that a
8 defendant is guilty is established beyond a reasonable
9 doubt, not beyond all possible doubt. If after a fair and
10 impartial consideration of all the evidence in the case,
11 or the lack of it, you can honestly say that you have such
12 a doubt as would cause a prudent person to hesitate before
13 acting in matters of importance to himself, then you have
14 a reasonable doubt. In that circumstance, it is your duty
15 to acquit.

16 On the other hand, if after a fair and impartial
17 consideration of all the evidence, you can honestly say
18 you have such an abiding conviction of guilt of a defendant,
19 that you would be willing to act upon this conviction in
20 important and weighty matters in the personal affairs of
21 your own life, then you have no reasonable doubt, and in
22 that circumstance you should convict.

23 A reasonable doubt may arise not only from the
24 evidence presented, but also from the lack of evidence,
25 since the burden, as I have told you, is always on the

Government to prove the defendants guilty of every essential element of the crime charged beyond a reasonable doubt.

The indictment charges that the defendants violated certain provisions of the federal narcotics laws. One of these laws, Title 21, Section 841, states:

"It shall be unlawful for any person, knowingly or intentionally to distribute or possess with intent to distribute a controlled substance."

Title 21, Section 812, defines the term "controlled substance" to include cocaine.

Title 21, Section 846, makes it a crime to conspire or agree to commit certain crimes, including the one I have just described.

Finally, Section 2 of Title 18 states that:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

Now, I am going to refer to the four counts of the indictment. You will be handed a copy of the indictment for you to take with you when you retire to the jury room to deliberate.

The first count is the conspiracy count. It charges that "On or about July 1, 1976, and continuing up to September 3, 1976, the date of this indictment, in the

rdlm 7

Southern District of New York, defendants Gino Reda and Louis Reda, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated, and agreed together and with each other to violate various sections of the United States law. It was part of said conspiracy that the defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute a Section 11 narcotic controlled substance, the exact amount thereof being unknown to the Grand Jury, in violation of various sections of the United States law."

I instruct you that cocaine is a Section 11 narcotic drug controlled substance.

The other three counts are called, in legal language, "substantive counts."

Count 2 states that "On or about August 24, 1976, defendants Gino Reda and Louis Reda unlawfully, intentionally and knowingly did distribute and possess with the intent to distribute approximately .69 grams of cocaine."

In addition, Counts 3 and 4 state, "On or about August 26, 1976, Gino Reda and Louis Reda unlawfully, intentionally and knowingly did possess with intent to distribute approximately one-half pound of cocaine and approximately one pound of cocaine."

Each of the four counts which I have just read

1 rdlm 8

2 to you, charges a separate crime and must be considered
3 separately by you. Also, although the indictment names
4 defendant Gino Reda on all counts, he is on trial before
5 you only on Count 2, and it is only his guilt or innocence
6 on this count that you must announce in your verdict. Louis
7 Reda is on trial before you on all four counts.

8 In determining the guilt or innocence of each
9 defendant on each of the counts against him here, bear in
10 mind that guilt is personal. The case stands or falls
11 upon the proof or lack of proof of the charge against each
12 defendant individually and not against somebody else.
13 Although, in considering Louis Reda's guilt or innocence
14 on the conspiracy count, you may have to determine the
15 nature of the participation, if any, of Gino Reda and of
16 any of the other un-indicted co-conspirators. But the fact
17 that you may find one defendant guilty or not guilty of
18 one of the offenses charged, should not control your verdict
19 as to any offense charged against the other defendant. Nor
20 may you draw any inference, favorable or unfavorable,
21 towards the Government or either of the defendants, from
22 the fact that Gino Reda is on trial before you only on
23 Count 2 or that certain persons were not named as defendants.
24 These matters are wholly outside your concern and have no
25 bearing on your function as jurors.

1 rdlm 9

2 Now, the elements of the conspiracy count, and
3 these you must find, each of them, beyond a reasonable
4 doubt, in order to find Louis Reda guilty of conspiracy.

5 First, that sometime between July 1, 1976 and
6 September 3, 1976, an agreement existed among the defend-
7 ants or between the defendants and another person other
8 than a Government agent.

9 Second, that it was part of this agreement to
10 distribute and to possess with the intent to distribute
11 cocaine.

12 Third, that the defendant Louis Reda knowingly
13 and willfully associated himself with the conspiracy.

14 Fourth, that any one of the conspirators, whether
15 Louis Reda or any other alleged conspirator, knowingly
16 committed at least one of the overt acts set forth in the
17 indictment at or about the time and place alleged.

18 The overt acts are alleged in the indictment as
19 part of Count 1. I will come back to those in a few
20 moments.

21 Now, the first element. What is a conspiracy?
22 The idea of a conspiracy is simple. A conspiracy is a
23 combination, an agreement, an understanding of two or more
24 persons by concerted action, to accomplish a crime or
25 unlawful purpose; in this instance, to distribute and

rdlm 10

possess with intent to distribute cocaine. The gist of the crime is the unlawful combination or agreement to violate the law. The success or failure of a conspiracy is immaterial to the question of guilt or innocence of a conspirator.

A conspiracy has sometimes been called a partnership for criminal purposes, in which every partner becomes the agent of every other partner. However, to establish a conspiracy, the Government is not required to show that two or more persons sat around a table and orally or in writing entered into a solemn compact, stating that they have formed a conspiracy to violate the law, setting forth details of their plans, the means by which the unlawful project is to be carried out, or the part to be played by each conspirator. Indeed, it would be extraordinary if there were such a formal agreement, either written or oral. Common sense will tell you that when persons, in fact, undertake to enter into a criminal conspiracy, much is left to the unexpressed understanding. The very nature of a conspiracy calls for secrecy, rendering detection difficult.

Thus, it is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. Express

rdlm 11

language or specific words are not required to indicate assent or attachment to the conspiracy. Proof concerning the accomplishment of the goal of a conspiracy may be the most persuasive evidence of the existence of the conspiracy itself. However, even if a conspiracy should fail of its purpose, it is still punishable as a crime.

In determining whether there has been an unlawful agreement or understanding, you may judge acts and conducts of the alleged members of the conspiracy, which are done to carry out an apparent criminal purpose. Usually, the only evidence available is that of disconnected acts on the part of the alleged individual conspirators. However, these acts and conduct, when taken together in connection with each other and with the reasonable inferences flowing therefrom, may show a conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof.

If upon such consideration of all the evidence, direct or circumstantial, you find beyond a reasonable doubt that the minds of the alleged conspirators met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy is established.

1 rdlm 12

2 As to the second element, that it was part of
3 the unlawful agreement to distribute and to possess with
4 the intent to distribute cocaine, the Government's proof
5 may, but need not, establish both of these objectives of
6 the conspiracy. If you find that the agreement had as its
7 object either one of those unlawful activities, then you
8 may be satisfied that the existence of the conspiracy is
9 established. But the Government need not prove that any
10 of the conspirators actually succeeded in distributing,
11 on the one hand, or possessing with the intent to distribute,
12 on the other hand, cocaine.

13 If you determine beyond a reasonable doubt that
14 a conspiracy as charged existed, then we come to the third
15 element, that the defendant Louis Reda knowingly and will-
16 fully associated himself with the conspiracy. You will
17 recall this requires the Government to establish that Louis
18 Reda participated in the conspiracy with knowledge of its
19 unlawful purposes and in furtherance of its unlawful
20 objectives.

21 To determine a defendant's membership in a
22 conspiracy, you must consider on all the evidence and
23 reasonable inferences to be drawn therefrom, whether he
24 knowingly and intentionally participated in it. Thus a
25 defendant's mere knowledge of the existence of a conspiracy

rdlm 13

or of any illegal act on the part of any alleged conspirator or his family relationship or mere association with one or more alleged conspirators, is not sufficient to establish his membership in the conspiracy. The Government must establish beyond a reasonable doubt that the defendant Louis Reda was aware of the conspiracy's basic purpose and object, and that he entered into the conspiracy with a specific criminal intent; that is, a purpose to violate the law.

To become a member of a conspiracy, a defendant need not know all the other members of a conspiracy, nor be fully informed as to all the details of the conspiracy. Each member may perform separate and distinct acts and at different times. Some conspirators may play major roles, while others minor roles. But if a defendant with understanding of the unlawful character of the conspiracy, intentionally engaged, advised or assisted with the purpose of furthering the illegal undertaking, he thereby becomes a knowing and willful participant.

Knowledge and intent obviously exist in the mind. It is not possible to look into one's mind to see what went on. So the only way you have for arriving at a decision concerning these questions is for you to take into consideration all the facts and circumstances shown by the evidence,

rdlm 14

to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

You will note that I have used the terms "unlawfully, willfully and knowingly." They mean that you must be satisfied beyond a reasonable doubt that the defendant knew what he was doing and that he did it deliberately, voluntarily and not because of some mistake, accident, carelessness, inadvertence, coercion, or some other innocent reason. It is not necessary that the defendant knew he was violating any particular law. It is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his activities.

Once you have found a conspiracy to exist and that defendant Louis Reda knowingly participated in it, the extent of his individual participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or duration of his participation. Even if he participated in it to a degree more limited than that of the other co-conspirators, he is equally culpable so long as he was in fact a conspirator.

I want to caution you once again, that mere

rdlm 15

association or family relationship does not make one a member of a conspiracy, nor is knowledge without participation sufficient, nor is knowledge of and presence at the commission of a narcotics transaction, without more, sufficient to make a defendant a conspirator. What is necessary is that the defendant participated with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the furtherance of its unlawful ends.

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one conspirator in the course of the conspiracy and in furtherance of the common purposes, are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you find in accordance with these instructions, that the alleged conspiracy existed and that the defendant Louis Reda was a participant in it, then acts done and statements and declarations made in furtherance of the conspiracy by any other person found by you to have been a member of the conspiracy, may be considered against the defendant Louis Reda, even though such acts or declarations were made in the absence and without the knowledge of this defendant.

It is important to note that this principle applies

rdlm 16

only to acts and declarations done or made during the continuance of the conspiracy and in furtherance thereof; that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

The indictment charges that the conspiracy existed from on or about the 1st day of July, 1976, and continuously until the date of the indictment, September 3, 1976. It is not essential that the Government prove that the conspiracy started and ended on or about these specific dates. It is sufficient if you find that, in fact, a conspiracy was formed and existed for some time within the period set forth in the indictment and that at least one of the overt acts, which I am just about to come to, was committed in furtherance thereof within that period.

I have already mentioned that the fourth essential item of the crime of conspiracy is that an overt act, intended to effect the object of the conspiracy, has been committed by at least one of the co-conspirators after the unlawful agreement has been made. An overt act is a step, a statement, an action or conduct taken to achieve or further the objective of the conspiracy. The overt act need not be criminal nor the very crime which is the object of the conspiracy. Thus the overt acts listed in the indictment

rdlm 17

are not necessarily by themselves criminal or illegal. If you find that any of these acts were committed for the purpose of advancing the unlawful enterprise, regardless of whether it was an act which by itself would be innocent, then the overt act requirement has been satisfied.

I will read to you the overt acts listed in the indictment:

"One, on or about August 18, 1976, in the vicinity of the Castle Hill Diner in The Bronx, New York, the defendant Gino Reda had a conversation with federal agents John Reape, Daniel Fernandez, concerning the sale of one pound of cocaine for a price of \$24,800.

"Two, on or about August 26, 1976, the defendant Gino Reda had in his possession approximately one-half pound of cocaine.

"Three, on or about August 26, 1976, the defendant Louis Reda possessed in his apartment located at 1910 Hone Avenue, Bronx, New York, approximately one pound of cocaine."

Those are the overt acts listed in the indictment. It is not necessary for the Government to prove that all the members of the conspiracy committed or participated in a particular overt act, since the acts of any one, done in furtherance of the conspiracy, become the acts of all the

1 rdlm 18

2 other members.

3 Also, the Government is not required to prove
4 each of the overt acts. It is sufficient if it proves the
5 commission of at least one of the overt acts at or about
6 the time alleged.

7 Now, the substantive charges:

8 First, Count 2, the first of the three substantive
9 counts, charges "On or about the 24th day of August, 1976,
10 in the Southern District of New York, defendants Gino Reda
11 and Louis Reda unlawfully, intentionally and knowingly did
12 distribute and possess with intent to distribute, a Schedule
13 2 narcotic drug controlled substance, to wit, approximately
14 .69 grams of cocaine." You will remember Count 2 is the
15 only count for which Gino Reda is on trial.

16 Count 3 charges, "On or about the 26th day of
17 August, 1976, defendants Gino Reda and Louis Reda unlaw-
18 fully, intentionally and knowingly did possess with intent
19 to distribute approximately one-half pound of cocaine."

20 Count 4 charges, "On or about the 24th day of
21 August, 1976, Gino Reda and Louis Reda, unlawfully, inten-
22 tionally and knowingly did possess with intent to distribute
23 approximately one pound of cocaine."

24 Before you can find Gino Reda guilty of the
25 offense charged in Count 2, and Louis Reda guilty of any of

rdlm 19

or all of the three substantive counts, you must be convinced beyond a reasonable doubt that the Government has proved each of the following elements:

First, that on or about August 24th, Gino Reda and Louis Reda distributed and possessed with intent to distribute cocaine. That is as to Count 2.

The first element as to Counts 3 and 4 is that on or about August 26th, the defendant Louis Reda possessed, with intent to distribute, cocaine.

The second element for all of these substantive counts is that the defendants acted unlawfully, intentionally and knowingly.

The third element is that the substance involved was in fact cocaine.

Concerning these elements, I would first like to mention that, as to distributing and possessing with intent to distribute, these items are used in the alternative. Therefore, you may find the first element established if you are satisfied either that the defendants distributed cocaine or that they possessed cocaine with the intent to distribute. You need not find that they did both.

The word "distribute" means "the actual constructive or attempted transfer of the item." The word "possess" has a common, everyday meaning; that is, "to have something

rdlm 20

within one's control." But to have something within one's control does not necessarily mean to have it in your hand or pocket. There are two kinds of possession, actual and constructive. Actual possession means that a defendant has personal, manual, physical control of the narcotic. Constructive possession means that although the narcotic is in the physical possession of another person, the defendant knowingly has power to exercise control over it for its distribution. Such control may be demonstrated by a working relationship between the person having such control and the person with actual physical custody, or by the ability of such person to dictate the movement or disposition of the narcotics. Either type of possession may be proved by direct or circumstantial evidence or a combination of both.

The word "intent" refers to a person's state of mind. Thus the phrase "possess with intent to distribute" can fairly be stated to mean "to control an item with the state of mind or purpose of transferring that item."

As to the element "unlawfully, willfully and knowingly," as I have previously explained to you, you must be satisfied beyond a reasonable doubt that the defendant knew what he was doing; that he did it deliberately and voluntarily and not because of a mistake, accident,

rdlm 21

negligence or some other innocent reason. An act is willful if it is done knowingly and deliberately with an evil motive or purpose. "Unlawfully" means "contrary to the law."

In determining whether the defendant has acted knowingly and willfully, it is not necessary that the defendant knew that he was violating any particular law. It is sufficient if you are convinced beyond a reasonable doubt that the defendant was aware of the general unlawful nature of his acts.

As to the third element of the substantive counts, the indictment charges that the narcotic drug involved is cocaine. You will recall that I have instructed you that cocaine is a Section 2 narcotic drug controlled substance. You must determine beyond a reasonable doubt that the substance in evidence in Government Exhibits 1, 2, 3, 4 and 5 is in fact cocaine.

You have heard testimony that prior to the crimes charged in the case before you, defendant Gino Reda allegedly engaged in a similar cocaine transaction in New York and Massachusetts. Evidence of an alleged earlier similar act may not be considered as proof of the act charged in Count 2, which is under deliberation here. However, if you should find beyond a reasonable doubt from other evidence

rdlm 22

in the case, that Gino Reda did the act charged in Count 2, then you may consider evidence as to an alleged earlier similar act or similar transaction in determining the state of mind or intent with which Gino Reda did the act charged in Count 2.

Where proof of an alleged earlier act or transaction of a like nature is established by evidence which is clear and conclusive, you may, but are not obliged to, draw an inference and find that in doing the act charged in Count 2, Gino Reda acted willfully and with specific intent and not because of mistake or accident or other innocent reason.

Now, the Government has also charged Louis Reda on Counts 2, 3 and 4, under Section 2 of Title 18, the aiding and abetting statute. You will recall that this statute provides that a person who aids and abets another to commit an offense, is just as guilty of that offense as the person who directly commits it.

What does this mean? It means, to find that Louis Reda aided or abetted another to commit a crime, you must find that Louis Reda in some way associated himself with the criminal venture; that he participated in it, as something he wished to bring about. In other words, that he sought by his action to make it succeed. Mere

rdlm 23

knowledge on the part of Louis Reda, that a crime was being committed and presence at its commission, is not sufficient to prove Louis Reda guilty of aiding and abetting. For a mere spectator at a crime is not a participant. But it is also not necessary for the Government to show that Louis Reda physically committed the offense charged, himself. Evidence of Louis Reda's participation in the crime may consist of any act committed by Louis Reda, whether established by direct or circumstantial evidence, from which you can conclude that he sought to further the success of the criminal enterprise.

As I have mentioned, there are two types of evidence on which a jury may properly rely in deciding guilt or innocence:

One is direct evidence, where a witness testified to what he or she saw, heard or observed or knows of his own knowledge; something which comes to him by virtue of his senses.

Circumstantial evidence is evidence of facts or circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind. Circumstantial evidence is that evidence which tends to prove a disputed fact by proof of another fact.

There is a simple example of circumstantial

1 rdlm 24

2 evidence which we often use. Assume, when you entered the
3 courthouse this morning, the sun was shining. It was a
4 nice day. Also, assume, in this courtroom, the blinds are
5 drawn, the drapes are drawn and you cannot look outside.
6 As you are sitting here, somebody walks in with an umbrella
7 which is dripping wet. Somebody else walks in in a raincoat
8 which is also dripping wet. Now, you cannot look out of
9 the courtroom and you cannot see whether or not it is in
10 fact raining. But on the combination of the facts which
11 I have just asked you to assume, it would be reasonable
12 and logical for you to conclude that it has been raining.
13 That's all there is about circumstantial evidence. You
14 infer, on the basis of reason and experience, from an
15 established fact, the existence of some other fact. Circum-
16 stantial evidence is of no less value than direct evidence,
17 for as a general rule the law makes no distinction between
18 direct and circumstantial evidence.

19 In addition, there are times when different
20 inferences may be drawn from a certain set of facts. An
21 inference is a deduction or a conclusion which the jury is
22 permitted to draw from facts which have been established
23 by either direct or circumstantial evidence in the case.
24 But an inference is not drawn by speculation or guesswork.
25 It rather must be arrived at by an exercise of your reason

rdlm 25

and common sense. So while you are considering the evidence presented, you are permitted to draw from the facts which you find to have been proved, not what counsel tells you the facts, but what you find the facts to be from the evidence, such reasonable inferences as seem justified in light of your experience.

Here again, let me remind you that whether based on direct or circumstantial evidence or the logical reasonable inferences drawn from such evidence, you must be satisfied of the guilt of a defendant beyond a reasonable doubt.

As jurors, you are the sole judges of the credibility and the truthfulness of each witness. In weighing the testimony of each witness, you should consider his relationship to the Government; the extent of his interest in the outcome of the case; his manner of testifying; his appearance and conduct while on the witness stand; his intelligence; the strength or weakness of his recollection; the extent to which he has been corroborated or contradicted, if at all, by the other credible witnesses. The ultimate question for you to decide is, did the witness tell the truth? To this end, you are to use your everyday common sense. Because a particular witness may be a law enforcement officer, such as an agent of the Drug Enforcement

rdlm 26

947

Administration, does not mean that his testimony is deserving of any special consideration or any greater weight by reason of that fact; and by the same token, of no lesser consideration.

There has been testimony by John Tufo, who was acting as an informer for the Government. The use of informers by the Government is not forbidden, provided that the use of such services in no way impinges upon the rights of a defendant. Whether or not you personally agree with this law-enforcement policy is not an issue and is not a question for you. You must consider Mr. Tufo's testimony just as you would that of any other witness.

In determining the credibility of any witness, you must consider whether he has any motive to falsify his testimony. In this regard, you may consider any relationship a witness may have to either side of the case; the manner in which he may be affected by the verdict; whether the witness has been given or promised any reward such as freedom from prosecution or punishment; or whether the witness has any interest in the case, such as a desire to seek revenge. Of course, the existence of any of these factors does not mean that a witness will color or falsify his testimony. They are factors for you to consider in evaluating credibility.

1 rdlm 27
2 The Government has alleged that Louis Reda, when
3 confronted by the authorities, with the presence of cocaine
4 and narcotic paraphernalia, denied any prior knowledge of
5 their existence in his apartment. The Government claims
6 that these statements by Louis Reda were false exculpatory
7 statements. A false exculpatory statement is simply a
8 statement which tends to show the innocence of the person
9 making the statement which is untrue. If you find that a
10 defendant made any statement or denial in response to
11 questions by law-enforcement officers in the course of the
12 investigation of this case that he knew to be false, you
13 may, but are not required to, consider this as evidence
14 of guilty consciousness pertaining to the charge against
15 him here and relevant to the issue of knowledge and intent.

16 If you find any witness has testified deliberately
17 false, as to a material fact, you may disregard all his
18 testimony or may accept that part of his testimony which
19 you believe is truthful and which you find to be corroborated
20 or supported by other evidence in the case. The Rules of
21 Evidence ordinarily do not permit witnesses to testify as
22 to opinions or conclusions. An exception to this rule
23 exists as to those whom we call "expert witnesses."
24 Witnesses who, by education and experience, have become
25 expert in some art, science, profession or calling, may

1 rdlm 28

2 state their opinions and the reasons for such opinions, on
3 the subject concerning which they have special knowledge.

4 Joseph Barbato, the Drug Enforcement Administra-
5 tion chemist from whom you heard testimony, is such an
6 expert witness.

7 Under your oath as jurors, you are not to be
8 guided or swayed in any manner by sympathy in your deliber-
9 ations or discussions. You are to be guided solely by
10 the evidence in the case. The crucial, hard-core question
11 you must ask yourselves as you sift through the evidence
12 is: Where do you find the truth? The only effort is to
13 find out what is the truth and justice triumphs only if
14 you find out what the truth is. You are to determine the
15 guilt or the innocence of each defendant individually,
16 solely on the basis of the evidence or lack of evidence
17 before you and subject to the law as I have charged you.
18 If you have any reasonable doubt as to a defendant's guilt,
19 you should not hesitate for any reason to find a verdict
20 of acquittal, not guilty.

21 On the other hand, if you should find that the
22 Government has met its responsibility in proving a defend-
23 ant's guilt beyond a reasonable doubt, you should not
24 hesitate because of sympathy or any other reason to render
25 a verdict of guilty.

rdlm 29

During the trial, from time to time there have been objections made by one or the other of the parties. As I am sure you recognize, it is the duty of a lawyer to object when he believes he should, and you should not be prejudiced in any way against anybody because of an objection made or because of my ruling on an objection.

As I told you at the outset, you cannot allow a consideration of the punishment which may be inflicted upon a defendant if convicted to influence your verdict in any way or to enter into your deliberations. The duty of imposing sentence rests exclusively with me. Your function is to weigh the evidence and determine guilt or innocence solely on the basis of the evidence and the law as I have given it to you. You must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts.

Now, the purpose of your deliberations is to exchange views with your fellow-jurors, to discuss and consider the evidence, to listen to each other's arguments, to present your own views, to reach a unanimous verdict as to a defendant, each defendant, based solely on the evidence, if you can do so without violence to your own individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration

1 rdlm 30
2 of the evidence in the case and after a discussion with
3 your fellow-jurors. Do not hesitate to re-examine your
4 views and to change your opinion when, after a discussion,
5 it appears that you are in error. But after carefully
6 considering all of the evidence in the case and after
7 considering the arguments of your fellow-jurors, you still
8 have a conscientious view which differs from the rest of
9 the jury, you are not to yield your view simply because
10 you are outnumbered.

11 If, in the course of your deliberations, you wish
12 to examine any of the exhibits, you wish to have any of
13 the testimony read or if there is anything else which you
14 need from me; Mr. Mortell, M-O-R-T-E-L-L, hand a note
15 to the marshal and we will do everything we can to help
16 you. In communicating with me, Mr. Mortell, do not in
17 any way indicate what your vote at the moment might be.
18 Remember, you must return a verdict on each count separately
19 as to each defendant. Remember once again, Louis Reda is
20 before you as to Counts 1, 2, 3 and 4, and Gino Reda only
21 as to Count 2.

22 Your verdict as to each count, as to each
23 defendant, must be unanimous.

24 Counsel, do you wish to see me?

25 MR. SHERMAN: Yes, your Honor.

1 rdlm 31

2 (At the side bar.)

3 MR. SHERMAN: I have no exceptions to the charge.

4 For the record, at this time I would like to
5 renew my motion for a directed verdict of acquittal.

6 THE COURT: I will deny it. Of course, my denial
7 of your motions, to each of your motions for a directed
8 verdict of acquittal is always without prejudice to your
9 right to make it at any appropriate time.

10 Mr. Jenkins?

11 MR. JENKINS: No, your Honor, but I would like to
12 renew my motion for judgment of acquittal.

13 THE COURT: All right. I have just indicated
14 I will deny it.

15 MR. VIRELLA: Your Honor, I believe, in the earlier
16 part of the charge, you were referring to Section 11.

17 THE COURT: The first time I mentioned it, yes.
18 It was Schedule 2. I will correct that and make sure they
19 understand.

20 (In open court.)

21 THE COURT: I think, ladies and gentlemen, when
22 I first read to you the conspiracy count, I made an error.
23 The count refers to a Schedule 2 narcotic drug controlled
24 substance. I know I said Schedule 11. Well, the 2 is
25 written in, as you will see in the indictment, as a Roman

1 rdlm 32

2 numeral, and I slipped and said Schedule 11 when I should
3 have said Schedule 2. If you remember Section 11, please
4 put in your mind that it is Schedule 2.

5 Mr. West, Mrs. Mayer, we are going to excuse you
6 now. We thank you for being with us, for your patience,
7 your attention, for your service as alternate jurors.

8 (A marshal was duly sworn.)

9 THE COURT: May I see counsel for one more moment.

10 (At the side bar.)

11 THE COURT: I have in mind, keeping the jury
12 until, say, 9:30, 10 o'clock tonight. Should I tell them
13 I have that in mind now and find out what they want to do
14 or have them report to me what they want to do about going
15 out to dinner or having it sent in?

16 MR. VIRELLA: I think --

17 THE COURT: They have been asking Fred what our
18 program is going to be for tonight and they want to make
19 phone calls, I guess.

20 MR. SHERMAN: I think it's a good idea to tell
21 them how long we will sit.

22 MR. JENKINS: Agreed.

23 THE COURT: I will say to them that I don't mean
24 by this to impose any deadlines upon them, that they can
25 take all the time they want. I just want them to know what

1 rdlm 33

2 the schedule was for today.

3 MR. SHERMAN: Could you just give them one specific
4 time? In other words 10 o'clock, 9:30, because sometimes
5 when you say 9:30 or 10, the jurors will come in at 9:30
6 and say, "Give us five more minutes." I think one time
7 is good. I don't care what time it is.

8 MR. VIRELLA: I think, your Honor, if you say
9 they will be sitting until 10 o'clock, and that dinner will
10 be provided for them.

11 THE COURT: I can tell them 10 o'clock and I
12 might let them go a little earlier if they get tired.

13 (In open court.)

14 THE COURT: I know you are interested in what
15 our schedule is. I think we will plan to work into the
16 evening until 10 o'clock. We will, of course, provide
17 you with dinner and I will want you to let the marshal
18 know what your view is. Do you want to go out for dinner
19 or have a hot meal sent in? Discuss that among yourselves
20 and let the marshal know and he will make arrangements to
21 do whatever you wish to do. I would suggest -- well, what-
22 ever considerations you wish to take into account. If we
23 have it sent in, I think it will take a little less time,
24 that's all. You may do whatever you wish. We can take you
25 out to dinner or we will have it brought in.

rdlm 34

Also, we will have transportation, some limousines here to take you home. Some of you, I know, have to go outside the city. Mr. Zalkin goes to Spring Valley, somebody goes to Mount Cisco. We will have transportation for all of you, limousines to take you from door to door.

Mrs. Rodriguez?

MRS. RODRIGUEZ: Would it be possible to notify our families in case we might be later?

THE COURT: Yes, in case there is some special reason for doing so, we would like you to do that through the marshal. Give the marshal the telephone number. Write it out on a piece of paper, and he will be glad to make phone calls for you.

Now, ladies and gentlemen, your oath sums up your duty: Without fear or favor to anyone, you will truly try the issues between these defendants and the Government, based solely upon the evidence and my instructions as to the law. This is important to the Government; it is important to each of the defendants.

All right, ladies and gentlemen.

We will get in to you, as quickly as we can, copies of the indictment.

(At 4 p.m., the jury retired to commence their deliberations.)

1 rdlm 35

2 THE COURT: On the record, I forgot to say to
3 them that they should take all the time they want and
4 this is not a deadline. Do you think I ought to bring
5 them back and say that?

6 MR. VIRELLA: Yes, your Honor.

7 THE COURT: Bring in the jury.

8 (Jury present.)

9 THE COURT: I'm sorry, ladies and gentlemen,
10 that I had to bring you back. I forgot to say one thing
11 to you which I want to make sure you understand; that when
12 I said 10 o'clock tonight, it is my intention that we
13 should adjourn at that time. I did not mean to put
14 upon you a deadline. I want you to be sure you take all
15 the time you need. When it comes time to adjourn this
16 evening, you still have more work to do, of course you
17 will do it tomorrow. I don't mean, and I hope you didn't
18 understand me to mean, that you have got to reach a con-
19 clusion by 10 tonight. You will reach a conclusion when-
20 ever you are ready to do so. I am sorry I had to call you
21 back.

22 ((The jury left the courtroom.))

23 THE COURT: Do we have copies of the indictment?
24 I have one clean copy. I don't think we need 12. If we
25 have a half-dozen, I would think that would be sufficient.

1 rdlm 36

2 MR. JENKINS: I have a clean copy.

3 THE COURT: Let's run some off if we are short
4 of them.

5 MR. VIRELLA: I only have one extra one.

6 (Discussion off the record.)

7 THE COURT: Make sure they are both clean copies
8 which will be sent in.

9 (Recess.)

10 (At 4:10 p.m., in the robing room, all counsel
11 present.)

12 THE COURT: I've a note from the jury which reads:

13 "May we have transcripts of telephone conversa-
14 tions and Kel tape recording, plus books (telephone),
15 scales and other evidence."

16 I take it, they want everything.

17 Can the three of you agree on what we should send
18 in to them and let me know if you have any problems, other-
19 wise send them in?

20 MR. JENKINS: Yes, your Honor.

21 MR. VIRELLA: Yes, your Honor.

22 (Note from jury marked Court Exhibit 1.)

23 (Recess.)

24 (8 p.m., in open court; jury not present.)

25 MR. VIRELLA: May we go on the record concerning

1 rdlm 37

2 the 3500 material?

3 THE COURT: Yes.

4 MR. VIRELLA: At this time, we have shown a list
5 of the 3500 material that was turned over to both defense
6 counsel during the course of the trial, and we had marked
7 the list as Government Exhibit 40 for identification, which
8 covers documents 3501 through 3545.

9 In addition to that list, we gave 3546 to defense
10 counsel, which is a two-page statement of John Tufo made
11 on November 30, 1976, and signed on December 10, 1976; and
12 3547, which is another statement of John Tufo made on
13 November 30, 1976, and signed on December 14, 1976.

14 THE COURT: All right.

15 (Jury present.)

16 THE COURT: Mr. Mortell, I have your second note,
17 which reads:

18 "Please explain conspiracy again, as well as the
19 terms aiding and abetting."

20 I am going to read to you the portions of my
21 charge which deal with those two subjects.

22 The elements of the conspiracy count that you
23 must find beyond a reasonable doubt in order to find Louis
24 Reda guilty of conspiracy are:

25 First, that sometime between July 1, 1976 and

September 3, 1976, an agreement existed among the defendants or between the defendants and another person other than a Government agent.

Second, that it was part of this agreement to distribute and to possess with the intent to distribute cocaine.

Third, that the defendant Louis Reda knowingly and willfully associated himself with the conspiracy.

Fourth, that any one of the conspirators, whether Louis Reda or any other alleged conspirator, knowingly committed at least one of the overt acts set forth in the indictment at or about the time and place alleged.

The first element: What is a conspiracy? The idea of a conspiracy is simple. A conspiracy is a combination, an agreement or an understanding of two or more persons by concerted action to accomplish a criminal or unlawful purpose. In this instance, to distribute and possess with intent to distribute cocaine. The gist of the crime is the unlawful combination or agreement to violate the law. The success or failure of a conspiracy is immaterial to the question of guilt or innocence of a conspirator.

A conspiracy has sometimes been called "a partnership for criminal purposes in which every partner

1 rdlm 39
 2 becomes the agent of every other partner." However, to
 3 establish a conspiracy, the Government is not required to
 4 show that two or more persons sat around a table and
 5 orally or in writing entered into a solemn compact, stating
 6 that they have formed a conspiracy to violate the laws,
 7 setting forth details of the plans, the means by which the
 8 unlawful project is to be carried out or the part to be
 9 played by each conspirator. Indeed, it would be extraor-
 10 dinary if there were such a formal agreement, either written
 11 or oral. Common sense will tell you that when persons, in
 12 fact, undertake to enter into a criminal conspiracy, much
 13 is left to the unexpressed understanding. The very nature
 14 of a conspiracy calls for secrecy, rendering detection
 15 difficult.

16 Thus, it is sufficient if two or more persons
 17 in any manner, through any contrivance, impliedly or tacitly,
 18 come to a common understanding to violate the law. Express
 19 language or specific words are not required to indicate
 20 assent or attachment to the conspiracy. Proof concerning
 21 the accomplishment of the goal of the conspiracy may be
 22 the most persuasive evidence of the existence of the
 23 conspiracy itself. However, even if the conspiracy should
 24 fail of its purpose, it is still punishable as a crime.

25 In determining whether there has been an unlawful

1 rdlm 40

2 agreement or understanding, you may judge acts and conduct
3 of the alleged members of the conspiracy, which are done
4 to carry out an apparent criminal purpose. Usually, the
5 only evidence available is that of disconnected acts on
6 the part of the alleged individual conspirators. However,
7 these acts and conduct, when taken together in connection
8 with each other and with the reasonable inferences flowing
9 therefrom, may show a conspiracy or agreement to secure a
10 particular result as satisfactorily and conclusively as
11 more direct proof.

12 If upon such consideration of all the evidence,
13 direct or circumstantial, you find beyond any reasonable
14 doubt that the minds of the alleged conspirators met in
15 an understanding way and that they agreed, as I have
16 explained a conspiratorial agreement to you, to work
17 together in furtherance of the unlawful scheme alleged in
18 the indictment, then proof of the existence of the conspiracy
19 is established.

20 As to the second element, the indictment alleges
21 that the conspiracy was both to distribute and possess
22 with intent to distribute cocaine. The Government's proof
23 may, but need not, establish both of these objectives of
24 the conspiracy. If you find that the agreement had as its
25 object, either one of these unlawful activities, then you

rdlm 41

may be satisfied that the existence of the conspiracy is established. But the Government need not prove that any of the conspirators actually succeeded, on the one hand, in distributing, or on the other hand, possessing with the intent to distribute cocaine.

If you determine beyond a reasonable doubt that a conspiracy as charged existed, you must next decide the third element. You will recall that this requires the Government to establish that Louis Reda participated in the conspiracy with knowledge of its unlawful purposes and in furtherance of its unlawful objectives.

To determine a defendant's membership in a conspiracy, you must consider, on all the evidence and reasonable inferences to be drawn therefrom, whether he knowingly and intentionally participated in it. Thus a defendant's mere knowledge of the existence of a conspiracy or of any illegal act on the part of an alleged conspirator or his family relationship or mere association with one or more alleged conspirators, is not sufficient to establish his membership in the conspiracy. The Government must establish beyond a reasonable doubt that the defendant you are considering was aware of the conspiracy's basic purpose and object and that he entered into the conspiracy with a specific criminal intent; that is, a purpose to

1 rdlm 42
2 violate the law.

3 On the other hand, to become a member of a
4 conspiracy, a defendant need not know all the other members
5 of the conspiracy, nor be fully informed as to all the
6 details of the conspiracy. Each member may perform separate
7 and distinct acts and at different times. Some conspirators
8 may play major roles, while others may play minor roles.
9 But if a defendant with understanding of the unlawful
10 character of the conspiracy, intentionally engaged, advised
11 or assisted for the purpose of furthering the illegal under-
12 taking, he thereby becomes a knowing and willful partici-
13 pant.

14 Knowledge and intent obviously exist in the mind.
15 It is not possible to look into one's mind to see what
16 went on. So the only way you have for arriving at a decision
17 concerning these questions is for you to take into consider-
18 ation all the facts and circumstances shown by the evidence
19 and to determine from all such facts and circumstances
20 whether the requisite knowledge and intent were present at
21 the time in question. Direct proof is unnecessary. Know-
22 ledge and intent may be inferred from all the surrounding
23 circumstances.

24 You will note that I have used the terms "unlawfully
25 willfully and knowingly." They mean that you must be

rdlm 43

964

1 satisfied beyond a reasonable doubt that the defendant knew
2 what he was doing and that he did it deliberately and
3 voluntarily and not because of some mistake, accident, care-
4 lessness, inadvertence, coercion, or some other innocent
5 reason. It is not necessary, of course, that the defendant
6 knew he was violating any particular law. It is sufficient
7 if you are convinced beyond a reasonable doubt that he
8 was aware of the general unlawful nature of his acts.
9

10 Once you have found a conspiracy to exist and
11 that defendant Louis Reda knowingly participated in it, the
12 extent of his individual participation has no bearing on
13 his guilt or innocence. The guilt of a conspirator is not
14 measured by the extent or the duration of his participation.
15 Even if he participated in it to a degree more limited
16 than that of the other co-conspirators, he is equally
17 culpable so long as he was in fact a conspirator.

18 I want to caution you again, that mere association
19 or family relationship does not make one a member of the
20 conspiracy, nor is knowledge without participation sufficient,
21 nor is knowledge of and presence at the commission of a
22 narcotics transaction, without more, sufficient to make a
23 defendant a conspirator. What is necessary is that the
24 defendant participated with knowledge of at least some of
25 the purposes of the conspiracy and with intent to aid in

rdlm 44

865

the furtherance of its unlawful ends.

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one conspirator in the course of the conspiracy and in furtherance of the common purposes, are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you find in accordance with these instructions, that the alleged conspiracy existed and that the defendant Louis Reda was a participant in it, then acts done and statements and declarations made in furtherance of the conspiracy by any other person found by you to have been a member of the conspiracy, may be considered against the defendant Louis Reda, even though such acts or declarations were made in the absence of and without the knowledge of this defendant.

It is important to note that this principle applies only to the acts and declarations done or made during the continuance of the conspiracy and in furtherance thereof; that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

The indictment charges that the conspiracy existed from on or about the 1st day of July, 1976, and continuously

rdlm 45

until the date of the indictment, September 3, 1976. It is not essential that the Government prove that the conspiracy started and ended on or about these specific dates. It is sufficient if you find that, in fact, a conspiracy was formed and existed for some time within the period set forth in the indictment and that at least one of the overt acts, which I am just about to come to, was committed in furtherance thereof within that period.

I have already mentioned that the fourth essential element of the crime of conspiracy is that an overt act, intended to effect the object of the conspiracy, has been committed by at least one of the co-conspirators after the unlawful agreement has been made.

An overt act is a step, statement, an action or conduct which is taken to achieve or further the objective of the conspiracy. The overt act need not be criminal nor the very crime which is the object of the conspiracy. Thus the overt acts listed in the indictment are not necessarily by themselves criminal or illegal. If you find that any of these acts were committed for the purpose of advancing the unlawful enterprise, regardless of whether it was an act which by itself would be innocent, then the overt act requirement has been satisfied.

The other overt acts listed in the indictment are:

1 rdlm 46

2 "One, on or about August 18, 1976, in the vicinity
3 of the Castle Hill Diner in The Bronx, New York, the
4 defendant Gino Reda had a conversation with federal agents
5 John Reape and Daniel Fernandez, concerning the sale of one
6 pound of cocaine for a price of \$24,800.

7 "Two, on or about August 26, 1976, the defendant
8 Gino Reda had in his possession approximately one-half pound
9 of cocaine.

10 "Three, on or about August 26, 1976, the defendant
11 Louis Reda possessed in his apartment located at 1910
12 Hone Avenue, Bronx, New York, approximately one pound of
13 cocaine."

14 Those are the overt acts listed in the indictment.
15 It is not necessary for the Government to prove that all
16 the members of the conspiracy committed or participated in
17 a particular overt act, since the act of anyone, done in
18 furtherance of the conspiracy, becomes the act of all the
19 other members.

20 Also, the Government is not required to prove
21 each of the overt acts. It is sufficient if it proves the
22 commission of at least one of the overt acts at or about
23 the time alleged.

24 Now, as to aiding and abetting, the Government
25 has also charged Louis Reda on Counts 2, 3 and 4, under

rdlm 47

Section 2 of Title 18, the aiding and abetting statute. You will recall that this statute provides that a person who aids and abets another to commit an offense is just as guilty of that offense as the person who directly commits it. Now, what does this mean? It means that to find that Louis Reda aided or abetted another to commit a crime, you must find that Louis Reda, in some way, associated himself with the criminal venture; that he participated in it as in something he wished to bring about. Or in other words, he sought by his action to make it succeed. Mere knowledge on the part of Louis Reda, that a crime was being committed and presence at its commission, is not sufficient to prove Louis Reda guilty of aiding and abetting. For a mere spectator at a crime is not a participant. But it also is not necessary for the Government to show that Louis Reda physically committed the offense charged, himself. Evidence of Louis Reda's participation in the crime may consist of any act committed by Louis Reda, whether established by direct or circumstantial evidence, from which you can conclude that he sought to further the success of the criminal enterprise.

All right, ladies and gentlemen, thank you.

(At 8:20 p.m., the jury again retired to continue their deliberations.)

1 rdlm 48

xxx

2 (Note from jury marked Court Exhibit 3.)

3 (At 10 p.m., in open court; jury not present.)

4 THE COURT: I have a note which says:

5 "The jury feels they cannot come to a clear-cut
6 verdict tonight, and would like to continue in the morning."

7 Since it is 10 o'clock, I guess it is time to go
8 home.

9 MR. VIRELLA: Your Honor, before the jury comes
10 back, I was speaking with Mr. Sherman concerning one of the
11 exhibits that went in with the jury. The specific number
12 escapes my mind, but it is one of the exhibits that Mr.
13 Armieri testified about. He specifically testified concern-
14 ing the chain of custody.

15 As your Honor may recall, Mr. Sherman requested
16 that portions of these exhibits were to be blocked out,
17 and we did that. However, apparently, in one of the
18 exhibits, we blocked out a whole half page which included
19 the September 9th entry, which was the date that Hayward
20 picked up the exhibits. What we would like to do tonight,
21 with the Court's permission, is to unstaple that portion
22 and restaple it after we show that section which should
23 not have been originally covered. So that there is no bad
24 impression made upon the jury with the change of the
25 exhibits overnight, we can do that tonight.

1 rdlm 49

2 MR. SHERMAN: Your Honor, I think Mr. Virella is
3 correct that we did block out a part which should have
4 been entered. As far as doing it tonight, I think the jury
5 is tired.

6 THE COURT: What should we do tonight, Mr. Virella?
7 Tell them about this tonight?

8 MR. VIRELLA: Yes, because the exhibits will be
9 coming back to us --

10 THE COURT: Why don't we tell them we are going
11 to do it.

12 MR. VIRELLA: That's perfectly all right.

13 THE COURT: Which number is it?

14 MR. VIRELLA: I will have to look at the exhibits.
15 It's 18D or E. It's one of those.

16 THE COURT: It can't be 18. 18 is the Kel.

17 MR. VIRELLA: 18 is the cassette. 18A is the
18 transcript. I think it's 18C or D.

19 THE COURT: We can put that on the record in the
20 morning.

21 Bring in the jury.

22 (Jury present.)

23 THE COURT: Mr. Mortell, ladies and gentlemen, I
24 have your note, which has been marked Court Exhibit 3,
25 which reads:

1 rdlm 50

2 "The jury feels they cannot come to a clear-cut
3 verdict tonight, and would like to continue in the morning."

4 So we will adjourn until tomorrow morning at
5 9:30.

6 We have, I believe, Mr. Marshal, limousines here,
7 transportation for everybody. We will see to it that you
8 get safely home as quickly as possible under the circum-
9 stances, and we will or you will assemble again tomorrow
10 morning at 9:30.

11 We all know that during the course of these
12 proceedings, from time to time, one or more of you have
13 been late. We have put up with it, although it inconveniences
14 all the rest of us. In this case, it will inconvenience
15 your fellow-jurors if any of you are late tomorrow morning.
16 That is because, Mr. Mortell, ladies and gentlemen, you
17 may not resume your deliberations tomorrow morning until
18 all 12 of you are present. So if any one of you are late,
19 it means you are going to keep all of the others waiting.
20 I'm sure none of you want that to happen. So it is impor-
21 tant, for reasons which I believe must be obvious to all
22 of you, the reasons why you must be on time tomorrow
23 morning.

24 Once again, you may not talk about this case
25 among yourselves or with anybody else, except that you may,

1 rdlm 51

2 of course, talk about it among yourselves, as you have
3 today, this afternoon, in the jury room when all 12 of
4 you are present.

5 Have a safe trip home, a good night's sleep,
6 and see you tomorrow morning.

7 Oh, ladies and gentlemen, I have one other thing,
8 if you will just give me a moment. One other thing, ladies
9 and gentlemen. It appears, through a clerical mishap, one
10 of the documents which was given to you, there were portions
11 of it deleted. It was a document which was received in
12 evidence in connection with Mr. Armieri's testimony about
13 the chain of custody of one of the tapes. Perhaps you
14 will recall it. And a portion was deleted. There were
15 deleted portions of that document, because they had nothing
16 to do with this case. And a portion of that document was
17 deleted by mistake.

18 Mr. Virella, do you think you can find it?

19 (Pause.)

20 THE COURT: Well, in any event, ladies and
21 gentlemen, tonight we will correct the exhibit so that it
22 now or tomorrow morning, anyway, will indicate to you the
23 information, all of the information which it should, and
24 we will let you know which document it is.

25 Do you have it yet, Mr. Virella?

1 rdlm 52

2 Well, all right, we will let you know in the
3 morning.

4 Have a good evening.

5 (The jury left the courtroom.)

xxx

6 (Note from jury marked Court Exhibit 3.)

7 THE COURT: All right, gentlemen, tomorrow morning.
8 You will all be here at 9:30 and at 9:30 we can square this
9 away.

10 Good night.

11 (An adjournment was taken to December 30, 1976
12 at 9:30 a.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25

EXCERPTS OF EXHIBIT 18 A

Gino (inaudible) go home (inaudible). What, you've been sitting around all the while? A-~~100~~101

Fernandez Yeah..., no we went out (inaudible) the car, you know.

Reape We got to stay here

Gino I told Johnny I was going up for uh, I had an appointment, uh, an appointment downtown.

Fernandez Yeah

Gino I had to go down to, uh, uh, 108th and Broadway. (inaudible)

Fernandez Well, we were going to go but you see, uh, you know, to go back in then to come back out, you know, and then uh, like, we were, we were really screwed up the first time coming out here, like, traffic etc. We didn't want the same thing to happen.

Gino Yeah, yeah

Fernandez You know

Gino How did you find it?

Fernandez Very good, very good

Gino I give you a line of shit?

Reape No, no

Fernandez You're good

Gino Alright

Fernandez You're good

Gino I don't feel like sitting out in the street wheeling, though, (inaudible)

Reape Hey

Gino I've got a suggestion, I don't know whether, whether, uh it will suit you or not. I think I've put myself as far up front as I possibly can. I don't live here. I live in Florida. But I've got my family here. I got my wife in Pelham Bay and I've got my son, he's got his wife and three kids. Are you reluctant to going up to his house?

Fernandez Uh----

Gino He's got his wife there, he has the three kids there and there's whoever.... If you want, they can vacate or they'll disappear before anything happens. I'll send them out. A-102

Fernandez Well....

Gino Only for the sake of not standing out in the street, that's all....

Fernandez Uh....

Gino If you want you keep it. You can sit there. You can call whoever you want, you can have your guy come up there and take a look at it again, re-check the package or you can take a piece of it, have him go out, come back again and clarify it. Once you clarify it. I'll even walk it wherever you want me to walk it if there is any doubt in your mind. Out the door or if your satisfied, you pay me you go your way and I'll stay where I'm at.

Fernandez Where? Up in your Place?

Gino In his house, in his house, in My son's house. He lives there, its my family (inaudible) to fuck up my family.

Fernandez Yeah, yeah, uh, uh.....

Gino I'm trying to give you a sore hand but I don't want to stay in the fucken street and I don't feel like sitting in an automobile (inaudible) you know.

Fernandez Yeah

Gino So

Reape Well the thing is, the money is here (inaudible)

Gino (inaudible)

Reape Okay?

Gino (Inaudible,) sit downstairs with the money (inaudible,) you can stay here. I'll take you up to the house, you look at the shit. You approve it. My son can take you back, pick up your car, pick up your cash, come back to the house, pay for it. And if you don't like it, he'll take you back to your car, you leave your car, leave whatever.....you can sit with your money here. I don't have....(inaudible)... I want to show you the stuff, you said you wanted to check it our a second time?

Fernandez Well

Gino To make sure its from the same piece

Fernandez

Yeah

A-103

Gino

(inaudible) call back at the house. He just called back now. I told him to be here. I have spoke such with the way you wanted to transact your business and I told him to be here.

Reape

Its not necessary though.

Gino

And let him do it. Let him, uh, join you with the package.

Reape

(inaudible) now and uh. Danny's got things to do and I have things to do.

Fernandez

John, Gino, (inaudible), you're more familiar with this, with this neighborhood. I'm not, you know. Uh, I would say, like again.

Gino

(inaudible) of New York.

Fernandez

What about, is there a gas station down there? I see some flags. You want to go inside of the gas station. They must have a men's room or something. Just walk to the corner and just (inaudible). There's a Mobile station, what do you say we meet you there in, uh, ten or fifteen minutes, how ever long its going to take you?

Gino

I rather hold. I rather hold until he comes back. I tell you why. Because my skepticism is going to make tell my son to follow me, and if I do that, its going to put eyes where there not suppose to be. Uh, I'm not reluctant, like I said, making you to come up to the house (inaudible).

Reape

I tell you, as far as, uh ripoff or anything, (inaudible) is concerned there is no possibility of that. You know, all we here to do is do it. We got what we got. You got what you said you got. There shouldn't be any hesitation. Right now, we're ready to roll, you know.

Gino

I know one thing, I've never, never in my whole entire life ever afforded the courtesy of anything other than whenever I pick up any pieces from anybody local, people that I know and that many of the people who I'm associated with, you know. Give me your cash, give me you car. I'll be back in twenty minutes. Back with the package, satisfied? Business is over with, if not satisfied, the party is over. Here's your money back, wait another twenty minutes. You'll get your money back, and that's it. I'm trying to work hand to hand with you. I'm not going to ask you to put anything in my hands, no more than I want to put anything in your hands. I'm trying to be out in the open with it so that your satisfied as much as I am. But, like I said to you before, Danny, there's no money in the world worth feeling uncomfortable about. And I am uncomfortable. Not relating you people right now its relating to the traffic of dealing in the streets right now.

A 103

Reape Hey, look, you know...

Fernandez Hey, uh, when you see John tell him to call us later and about that thing, forget it.

Gino You want me to drop it?

Fernandez Right

Gino Cause he isn't gonna have contact with my guy, I am

Fernandez Fine. This is too much, too much bullshit

Gino Alright, let me ask you another question. (Inaudible) my personal (inaudible) Colombian grass (inaudible)

Fernandez Hey Gino

Gino (Inaudible)

Fernandez Why don't you put your car up here and let's talk so that we don't have to scream at each other. Well talk to him a minute and that it. Can we get in?

Gino Yeah, come in. There's been a lot of noise coming out from down south. If you've been down there, you know that I'm not bullshitting. They've got a load of stuff that looks like fucken spinach, its Colombian, its, uh, Jamaican Gold, they're trying to pass it off as Colombian. (Inaudible) in bulk of Colombian material.

Fernandez How much?

Gino It's rainbow color, they're letting drips and raps through, they're letting six or seven hundred pounds a day go. (Inaudible) situation pass or play on the material that you see. You don't have to take one bag, you can accept one kilo, whatever, okay. They're talking between 295 and 315 per bail. I could get the rest of that (inaudible)

Fernandez Right now, what I'm interested in is some white stuff, you follow me, because that's that's that's what we that's what we came up here to do. You know we didn't come up here to ...

Gino Yeah, I know

Fernandez not

Fernandez I'm gonna go back to these people and tell them, hey, uh, I didn't get you what you wanted but uh you want some pot? That's that's what you're telling me. You know. No that's not what I'm telling.

Gino No I'm not trying to rectify one situation with another

Fernandez I would look like an idiot (inaudible)

Gino (Inaudible) some white. I meant the other (inaudible) not to compensate one thing for the other (inaudible) There is no compensation, if the people are into coke, and this is what they wanted then that's (inaudible) to pick up. The only thing I could do is try and locate people that are more flexible, with giving you the option of walking in, looking at it, passing or playing on the on the coke. Here I thought I had that option. I don't. (Inaudible) I don't if I would have

17-104

EXCERPTS OF TRANSCRIPT OF TRIAL

1 rdlm Barbato-redirect 444

2 MR. JENKINS: I object to that. That's argument-
3 ative.

4 THE COURT: Yes.

5 Q Mr. Barbato, you testified on cross-examination
6 that you made a number of tests other than the ones you
7 testified to on direct, is that correct?

8 A Yes. There were a number of examinations done.

9 Q Now, did you also conduct a number of examinations
10 on marijuana with respect to this case?

11 MR. SHERMAN: Objection, your Honor.

12 THE COURT: Sustained.

13 MR. SHERMAN: May we approach?

14 (At the side bar.)

15 MR. SHERMAN: Your Honor, there was no reason
16 for that question.

17 THE COURT: What was the reason for that?

18 MR. VIRELLA: Your Honor, he opened the door as
19 to all the series of examinations that he conducted with
20 respect to this case: the mat, the scales and everything.

21 THE COURT: No. You shouldn't have done that,
22 Mr. Virella. It was improper.

23 MR. SHERMAN: I am going to request a mistrial
24 again.

25 THE COURT: I will deny it.

1 rdlm Tufo-cross 125
2 or Louis Reda was when?
3 A That would have been the following day.
4 Q And on the following day, you called Gino Reda,
5 is that correct?
6 A That's correct.
7 Q And it was at that time that Gino Reda told you
8 that he was sending the cocaine either to Boston or to
9 Florida, is that correct?
10 A That's correct.
11 Q And when he called you, he told you that he might
12 send it to a source of supply in Florida, is that correct?
13 A That's correct.
14 Q Or else, Gino Reda might sell it in Boston, is
15 that correct?
16 A That's correct.
17 Q And did you have any other conversations with
18 Gino Reda on the 25th?
19 A Not to my knowledge, no.
20 Q Now, Mr. Tufo, as far as you know, Gino Reda was
21 in this thing solely by himself and with no one else except
22 you, Agent Reape and Fernandez, is that correct?
23 A That's correct.
24 Q Louis Reda was not involved, is that correct?
25 A Not to my knowledge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

rdlm

Tufo-cross

126

MR. VIRELLA: Objection.

MR. SHERMAN: I have no further questions.

MR. VIRELLA: I have an objection, your Honor.

THE COURT: Overruled.

Q The answer was what?

A To the best of my knowledge, no.

MR. SHERMAN: Thank you.

MR. VIRELLA: Your Honor, may we approach the
side bar?

THE COURT: Yes.

(At the side bar.)

MR. VIRELLA: Your Honor, we had discussed this
with the defense about having the two telephone witnesses
and come in and testify to two telephone records, because
one has to go back to Florida and the other one is in
New York and has to go back to work. It should be very
short. Can we do that before the cross-examination
continues?

THE COURT: How about it?

MR. JENKINS: I have no objection to that.

THE COURT: All right.

(In open court.)

THE COURT: Ladies and gentlemen, before we
proceed with further questions for Mr. Tufo, we are going

1 rdlm Fernandez-direct 372
2 case, at that point Special Agents O'Connor and Reape
3 proceeded to inventory the drugs and other documents,
4 et cetera, that were contained in the Samsonite brief case.
5 MR. VIRELLA: At this time we would offer Govern-
6 ment Exhibit 14 into evidence.
7 MR. JENKINS: Your Honor, I would object at this
8 time on grounds previously stated. I can restate them at
9 the bench if you would like.
10 MR. SHERMAN: I object also, your Honor.
11 THE COURT: You both have your continuing objec-
12 tion. Overruled.
13 (Government Exhibit 14 for identification
14 received in evidence.)
15 Q Mr. Fernandez, what else took place on that day?
16 A On that day, I was one of the searching agents
17 of the apartment and Mr. Louis Reda was in the living room.
18 Upon myself discovering the cocaine contained in that
19 brief case, I asked Louis Reda if there was any additional
20 drugs in the house, and his response was that "There is
21 nothing in the house."
22 I remained in the living room of the apartment
23 with Louis Reda. Shortly thereafter, Special Agent Michael
24 O'Connor located some additional drugs in the apartment --
25 MR. SHERMAN: Objection, your Honor. May we

ROBERT H. JOHNSON JR.